

FREEDOM COURT REPORTING

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE MIDDLE DISTRICT OF ALABAMA 3 SOUTHERN DIVISION 4 5 KAREN LURIE, 6 Plaintiff, 7 versus 1:06-CV-0034MEF 8 GLOBE LIFE AND ACCIDENT 9 INSURANCE COMPANY, et al., 10 Defendants. 11 12 13 * * * * * 14 15 DEPOSITION OF JOHN H. ALLEN, 16 taken pursuant to stipulation and agreement 17 before Jackie Parham, Certified Shorthand 18 Reporter and Commissioner for the State of 19 Alabama at Large, in the law offices of 20 Beasley, Allen, Crow, Methvin, Portis & Miles, 21 272 Commerce Street, Montgomery, Alabama, on 22 Thursday, the 7th day of December, 2006, 23 commencing at approximately 9:30 a.m.</p>	<p>Page 1</p> <p>1 STIPULATION 2 It is hereby stipulated and agreed by 3 and between counsel representing the parties 4 that the deposition of 5 JOHN H. ALLEN 6 may be taken before Jackie Parham, Certified 7 Shorthand Reporter and Commissioner for the 8 State of Alabama at Large, without the 9 formality of a commission, and all formality 10 with respect to other procedural requirements 11 is waived; that objections to questions, other 12 than objections as to the form of the question, 13 need not be made at this time, but may be 14 reserved for a ruling at such time as the said 15 deposition may be offered in evidence or used 16 for any other purpose, by either party, as 17 provided for by the Federal Rules of Civil 18 Procedure. 19 It is further stipulated and agreed by 20 and between the parties hereto and the witness 21 that the signature of the witness to this 22 deposition is hereby not waived. 23</p> <p>Page 2</p> <p>1 APPEARANCES 2 3 APPEARING ON BEHALF OF THE PLAINTIFF: 4 CHRISTOPHER E. SANSPREE, ESQUIRE 5 Beasley, Allen, Crow, Methvin, 6 Portis & Miles 7 272 Commerce Street 8 Montgomery, Alabama 36104 9 10 APPEARING ON BEHALF OF THE DEFENDANTS: 11 PHILIP H. BUTLER, ESQUIRE 12 Bradley, Arant, Rose & White 13 401 Adams Avenue 14 Suite 780 15 Montgomery, Alabama 36104 16 17 18 19 * * * * * 20 21 22 23</p>
	<p>Page 4</p> <p>1 INDEX OF EXHIBITS 2 3 DX-1 (Allen depo in Moorer case) 13 4 DX-1A (Page 158 of Allen depo in 13 5 Moorer case) 6 DX-2 (CV) 16 7 DX-3 (John Allen depo in 23 8 Provident case) 9 DX-3A (Pages 33 - 36 of John 23 10 Allen depo in Provident 11 case) 12 DX-4 (John Allen depo in American ... 32 13 Fidelity case) 14 DX-4A (Page 19 of John Allen depo ... 32 15 in Am. Fidelity case) 16 DX-1B (Page 25 of John Allen depo ... 36 17 in Moorer case) 18 DX-5 (John Allen depo in American ... 55 19 Pioneer case) 20 DX-5A (Page 16 of depo of John 55 21 Allen in Am. Pioneer case) 22 DX-6 (Cover of book entitled 68 23 Liability Claim Practices)</p>

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**367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-3**

EXHIBIT

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1 DX-6A (Chapter 4 of Liability 68 2 Claim Practices' book) 3 DX-7 (List of cases) 69 4 DX-8 (Report from Mr. Allen) 82 5 DX-9 (Current depo list) 82 6 DX-10 (Final Notice of premium 88 7 due) 8 DX-11 (Premiums and Reinstatement ... 95 9 document) 10 DX-12 (Notebook) 153 11 12 * * * * * * * * * * 13 INDEX OF EXAMINATION 14 MR. BUTLER 6 15 MR. SANSPREE 148 16 MR. BUTLER 151 17 18 19 20 21 22 23	1 you in your business, or do you work by 2 yourself, or what? 3 A. Work by myself. Yes. 4 Q. Okay. Are you married? 5 A. Divorced. 6 Q. Okay. And please give me the names and 7 ages and where your children live, if you 8 have children. 9 A. Yeah. I've got four of them. Got a son, 10 John Clifford. He lives here in 11 Montgomery. He's thirty-three. Then I've 12 got a daughter, Natalie, who lives -- 13 Q. Let me interrupt you just a moment because 14 that'll save us some time, unbelievably. 15 A. All right. 16 Q. Your son, John, where does he work? 17 A. He works at Jackson Hospital. 18 Q. What's he do there? 19 A. He's an anesthetist. 20 Q. Got 'ya. All right. I interrupted. Go 21 ahead. 22 A. Okay. Then I've got a daughter, Natalie. 23 I think she's approximately twenty-five.
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1 2 JOHN H. ALLEN, 3 The witness, after having first been 4 duly sworn to speak the truth, the whole truth, 5 and nothing but the truth, testified as follows: 6 EXAMINATION 7 BY MR. BUTLER: 8 Q. Mr. Allen, would you please state your 9 full name, your residence address, and 10 your business address? 11 A. John H. Allen, 5721 Fifth Court South, 12 Birmingham, Alabama. Business address is 13 the same. 14 Q. So your office is out of your home? 15 A. Correct. 16 Q. All right. And what is your Social 17 Security number, please, sir? 18 A. 423-64-9141. 19 Q. And your date of birth? 20 A. 3/27/49. 21 Q. All right. What do you call your 22 business? 23 A. John H. Allen Consulting. Q. Okay. Is there anybody associated with	1 Supposed to know these things, but close. 2 And she's a flight attendant out in Denver 3 with Sky West. And then I've got a 4 daughter, Rachel, who's about 5 twenty-three, twenty-four, and she's in 6 Washington, D.C. She's working with a 7 real estate firm up there. And then I've 8 got a seventeen-year-old, Austin, who is a 9 student in Birmingham. 10 Q. Okay. Is that all your children? 11 A. Yeah. 12 Q. Do you have a son named Grant? 13 A. Grant. That was -- That was through 14 another woman back -- back in the -- I 15 guess he's about fourteen, fifteen years 16 old, something like that, maybe a little 17 older. 18 Q. So when you told me you had four children, 19 you really have five children? 20 A. Yeah. Right. 21 Q. Okay. Have you ever been arrested for a 22 criminal offense, other than a normal 23 traffic offense?

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1 A. Yes.	1 the drug offense in Chilton County?
2 Q. What's that?	2 A. That was concerning a minuscule amount of
3 A. 1978 for misdemeanor possession of	3 cocaine and a small amount of marijuana.
4 marijuana, and 2003 for a DUI.	4 Q. And were you also charged with possession
5 Q. Is that all?	5 of drug paraphernalia?
6 A. Yes.	6 A. Yeah.
7 Q. Okay. You've given a number of	7 Q. And those were dismissed?
8 depositions in your career, haven't you,	8 A. Yes.
9 sir?	9 Q. What was the disposition of the DUI?
10 A. Yes.	10 A. Paid a fine and went to the driving school
11 Q. And you realize that your testimony is	11 thing.
12 under oath in those depositions as well as	12 Q. Okay. Were you placed on probation?
13 this one here today?	13 A. No, sir.
14 A. Right.	14 Q. Who was your attorney in that action?
15 Q. Okay. In 1978, were you convicted of that	15 A. Tommy --
16 offense?	16 Q. Kirk?
17 A. I pled guilty to misdemeanor possession.	17 A. Kirk. Yeah.
18 Q. Of marijuana?	18 Q. When was it disposed of?
19 A. Right.	19 A. 2000 -- Let's see. -- I can't remember
20 Q. Okay. And is that when you were married	20 whether it was 2005 or 2006.
21 and had children?	21 Q. Okay.
22 A. Yes.	22 A. May have been 2006.
23 Q. Okay. It wasn't when you were a college	23 Q. Was this in front of Judge Fuller in
Page 10	Page 12
1 student or anything?	1 Chilton County?
2 A. No.	2 A. I believe that's correct.
3 Q. Okay. And then you had a DUI in 2003; is	3 Q. With regard to the misdemeanor possession
4 that right?	4 of marijuana in 1978, was that in
5 A. Right.	5 Tuscaloosa County?
6 Q. And that's the only thing you've been	6 A. Correct.
7 arrested for?	7 Q. Have you ever lied under oath about that
8 A. Yes.	8 arrest?
9 Q. Isn't it a fact that you were arrested for	9 A. Yes.
10 and pled guilty to a felony drug offense	10 Q. Okay. In depositions in civil cases?
11 in 2004?	11 A. One deposition.
12 A. No.	12 Q. Okay. Was that in the Moorer versus
13 Q. In Clanton?	13 Republic American Deposition?
14 A. No. I only pled guilty to a DUI.	14 A. I don't recall which one that was in.
15 Q. Oh, is that right?	15 Q. Was Dee Miles, one of the lawyers in this
16 A. Yeah. The rest was dismissed.	16 firm at Beasley, Allen, the lawyer when
17 Q. The drug conviction was dismissed?	17 you did that?
18 A. There wasn't any conviction.	18 A. I don't know.
19 Q. I mean, the drug charge was dismissed?	19 Q. Let me see if I can refresh your
20 A. The allegations were dismissed. Yes.	20 recollection. I've got a copy. And what
21 Q. You were arrested for that, weren't you?	21 I'm going to ask the court reporter to do
22 A. Yes.	22 is just copy the first page of it so that
23 Q. What were you accused of with regard to	23 we'll have the style, and then I have a

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<p>1 travel transcript, and just copy the page 2 that's involved. If you want the rest of 3 it, you're certainly welcome to it.</p> <p>4 MR. SANSPREE: I might have the 5 whole thing. I don't have a 6 copy.</p> <p>7 MR. BUTLER: I'll be glad to 8 furnish it to you. But do 9 you think we ought to 10 clutter the Record by having 11 the whole thing or --</p> <p>12 MR. SANSPREE: If it's easier 13 just to mark it as an 14 exhibit, she can just copy 15 it. However you want to do 16 it, Phil.</p> <p>17 (Defendant's Exhibit 1 marked 18 for purposes of identification)</p> <p>19 (Defendant's Exhibit 1-A marked 20 for purposes of identification)</p> <p>21 Q. Let me show you a copy, which is a 22 condensed version or a travel transcript, 23 of the deposition of Joseph Moorer versus</p>	<p>1 you given in your career, Mr. Allen?</p> <p>2 A. Fifty-eight.</p> <p>3 Q. Fifty-eight?</p> <p>4 A. Fifty-eight or fifty-nine. Yeah.</p> <p>5 Q. To refresh your recollection, does it 6 appear that Dee Miles of the Beasley, 7 Allen firm was counsel for the plaintiff 8 in that case of Moorer versus Republic?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Thank you.</p> <p>11 Have you ever filed any grievances 12 with the Alabama Bar Association against 13 lawyers who have taken your deposition in 14 civil cases wherein you were put up as an 15 expert witness?</p> <p>16 A. Yes.</p> <p>17 Q. Who have you filed grievances against?</p> <p>18 A. There was one Birmingham --</p> <p>19 Q. John Dodson?</p> <p>20 A. Huh?</p> <p>21 Q. John Dodson?</p> <p>22 A. Yeah. That may be him.</p> <p>23 Q. Anyone else?</p>
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<p>1 Republic American Life Insurance Company. 2 And I have marked on page 158, I think, 3 the page number involved.</p> <p>4 A. Yes.</p> <p>5 Q. When you answered the question there, 6 "Have you ever been arrested," you 7 answered "No," and that was incorrect, 8 wasn't it?</p> <p>9 A. Correct.</p> <p>10 Q. And you knew it was incorrect when you 11 gave that answer, didn't you?</p> <p>12 A. It was a judgment error.</p> <p>13 Q. A judgment error?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Is it a judgment error, in your view, as a 16 witness when you knowingly answer a 17 question falsely under oath?</p> <p>18 A. I mean, it was a judgment error, and I 19 gave the wrong answer.</p> <p>20 Q. Yes, sir. And you knew it was wrong at 21 the time you gave it, didn't you?</p> <p>22 A. Yes.</p> <p>23 Q. Approximately how many depositions have</p>	<p>1 A. I filed a grievance on a payment of a bill 2 with Jack Hollingsworth.</p> <p>3 Q. Okay. What was the nature of the 4 grievance against Mr. Dodson?</p> <p>5 A. Wasn't paying the bill.</p> <p>6 Q. That was all?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What was the disposition of that?</p> <p>9 A. Paid the bill.</p> <p>10 Q. With regard to your formal education, 11 Mr. Sanspree has been kind enough to 12 furnish me, along with your report, of 13 course, your curriculum vitae. As I 14 understand your formal education -- We can 15 just mark that as an exhibit. That will 16 be fine. Thank you, sir.</p> <p>17 (Defendant's Exhibit 2 marked 18 for purposes of identification)</p> <p>19 Q. Exhibit 2 is a copy of your current 20 curriculum vitae, is it not?</p> <p>21 A. Correct.</p> <p>22 Q. Have you reviewed that to see that it is, 23 in fact, current?</p>

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<p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And as I understand from your CV, 3 your formal education was at the 4 University of Alabama, Bachelor of Science 5 in General Business Administration; is 6 that correct?</p> <p>7 A. Yeah. Commerce and Business 8 Administration.</p> <p>9 Q. Understood. Okay. 10 Do you have any degrees from formal 11 education institutions subsequent to your 12 graduation from the University of Alabama 13 in 1971?</p> <p>14 A. I assume you're excluding from that, like, 15 the Insurance Institute of America, the 16 Associate in Claims designation? I mean, 17 that is a formal --</p> <p>18 Q. I'm going to get to that.</p> <p>19 A. All right. But as far as other colleges, 20 no, I don't have any other college 21 degrees.</p> <p>22 Q. All right, sir. Go ahead and tell me 23 about -- I think you were telling me about</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. All right, sir. Let me go back to your 2 college course, if I may, and ask one 3 question. In your courses at the 4 University of Alabama, did you take any 5 courses in life insurance claims or life 6 insurance?</p> <p>7 A. No.</p> <p>8 Q. Did the AIC involve life insurance claims?</p> <p>9 A. I don't recall all that was in the books 10 at the time.</p> <p>11 Q. Have you ever taught on the subject of 12 insurance at seminars or things of that 13 nature?</p> <p>14 A. I discussed -- At one of the Association 15 of Certified Fraud Examiners, I have 16 talked at one time about insurance and 17 insurance claims.</p> <p>18 Q. Okay. That's just one time?</p> <p>19 A. May have been twice.</p> <p>20 Q. Okay. Has Mr. Sanspree shared the podium 21 with you in that seminar?</p> <p>22 A. Yes.</p> <p>23 Q. And Mr. Sanspree is the lawyer here today</p>
<p style="text-align: right;">Page 18</p> <p>1 your AIC designation.</p> <p>2 A. Right.</p> <p>3 Q. And what is that, please, sir?</p> <p>4 A. That's an Associate in Claims designation 5 that's -- You go through a series of 6 courses. I believe there are four courses 7 involved on multiple claims areas. You 8 take each course individually and then you 9 take a written exam. And upon completion 10 of the -- I believe it's a four-course 11 program, then you receive your Associate 12 in Claims designation.</p> <p>13 Q. All right. And did you accomplish that 14 while you were employed with Aetna?</p> <p>15 A. That's correct.</p> <p>16 Q. Did that course involve basically 17 commercial lines, property and 18 casualty-type insurance?</p> <p>19 A. It was all different types of insurance. 20 I don't recall the four courses as such. 21 But it was -- I mean, you had everything 22 from ocean marine. It was, I guess, a 23 litany of different insurance courses.</p>	<p style="text-align: right;">Page 20</p> <p>1 representing Ms. Lurie?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Thank you.</p> <p>4 Now, the Certified Fraud Examiners, 5 did you have to take any course or 6 complete any qualifications to become a 7 certified fraud examiner?</p> <p>8 A. You had to complete an application. And 9 then based on my training, education and 10 experience, I was grandfathered into the 11 organization without having to take the 12 formal test.</p> <p>13 Q. Yes, sir. That is not really an insurance 14 organization, is it?</p> <p>15 A. Well, it's made up of all realms of 16 people, from insurance to accountants. 17 You've got FBI agents. You've got 18 treasury agents. A lot of internal 19 auditors. We've got several different 20 folks that are insurance company-oriented. 21 So it's a big cross-section of folks that 22 are involved.</p> <p>23 Q. Would you describe it as an insurance</p>

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1 professional organization? 2 A. I don't know whether it's totally 3 insurance. It's fraud-oriented, which, 4 you know, dovetails with insurance. But 5 it's not strictly related to the insurance 6 line. 7 Q. I see. During the course of your work as 8 an expert or professional witness, have 9 you utilized documents that you've 10 received in other cases to assist you in 11 forming your opinions in later cases? 12 A. Sometimes. 13 Q. Yes, sir. In doing so, do you attempt to 14 honor and obey court orders? 15 A. Yes, sir. 16 Q. Did you use some information in a 17 Provident case that had been ordered to be 18 protected or privileged? 19 A. I don't know of any. 20 MR. BUTLER: I'm going to do this 21 one the same way. But -- 22 MR. SANSPREE: Am I on that one? 23 Do I have a copy of that	1 welcome to it. This will 2 be, I think, Exhibit 3 and 3 then 3-A, please, ma'am. 4 (Defendant's Exhibit 3 and 3-A 5 marked for purposes of 6 identification) 7 Q. Let me show you Defendant's Exhibit 3, 8 please, sir, which is a case called 9 Pebbles versus Provident Life and Accident 10 Insurance Company. The lawyers in that, 11 if I can find them, appear to be a 12 Mr. Arnston, whom I don't know, a 13 Mr. Wilson Jenkins and Mr. Keith Medley. 14 That's marked as Defendant's Exhibit 3. 15 And then the reference that I have is over 16 on page -- I think I said 33 through 36. 17 A. Okay. 18 Q. I don't want to rush you. But you're 19 welcome to read that first. 20 A. Okay. This is on the Hangarter documents? 21 Q. Yes, sir. You might want to spell that. 22 It's a little unusual. 23 A. Hangarter.
1 one? 2 MR. BUTLER: I don't know. 3 MR. SANSPREE: Was I the 4 attorney? 5 MR. BUTLER: You were not the 6 attorney. 7 MR. SANSPREE: Okay. 8 MR. BUTLER: So for my purposes, 9 I would like to mark the 10 first page of it, which is 11 the cover page and some 12 other pages. It, again, is 13 a travel transcript. And 14 I'm interested in -- it's 15 all on one page, but it 16 covers pages 33, 34, 35 and 17 36. 18 MR. SANSPREE: That's fine. 19 However you want to do it, 20 Phil. If you don't mark the 21 whole thing, I'll just ask 22 you later about it. 23 MR. BUTLER: You're certainly	1 Q. Thank you, sir. And that was a previous 2 Provident case, was it not? 3 A. Yes. 4 Q. Handled by Mr. Sanspree? 5 MR. SANSPREE: No. 6 A. No. 7 Q. It wasn't? 8 A. No. 9 Q. Do you know whether it was handled by the 10 Beasley firm? 11 A. No. I think that was a California case. 12 MR. SANSPREE: It was a San 13 Francisco case. 14 Q. Did Mr. Sanspree furnish those documents 15 to you? 16 A. Yes. 17 Q. And did you know that they were under a 18 Protective Order? 19 MR. SANSPREE: They weren't, 20 Phil. I just got them from 21 the courthouse. I flew out 22 there to get them. 23 A. That's my understanding. They just came
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<p>1 straight out of the courthouse.</p> <p>2 MR. SANSPREE: If they were, then</p> <p>3 the Court didn't protect</p> <p>4 them, because I just flew</p> <p>5 out there and got them.</p> <p>6 Q. Well, my question is, there seems to be a</p> <p>7 discussion on these pages that I've marked</p> <p>8 about the documents being privileged. And</p> <p>9 as to when they were privileged, I think</p> <p>10 you mentioned in your deposition here on</p> <p>11 page -- on Exhibit 3-A that they became</p> <p>12 privileged after your report or something</p> <p>13 of that nature.</p> <p>14 MR. SANSPREE: They were marked</p> <p>15 "Privileged" at the</p> <p>16 courthouse out of San</p> <p>17 Francisco. But I just flew</p> <p>18 out there and got them.</p> <p>19 Nobody tried to protect</p> <p>20 them.</p> <p>21 A. There were several things out of the</p> <p>22 Provident thing that came up about</p> <p>23 Privileged documents.</p>	<p>1 your employment background. Upon</p> <p>2 graduating from the University of Alabama,</p> <p>3 was your first job with Alabama Power</p> <p>4 Company?</p> <p>5 A. Yes. I mean, I had had other part-time</p> <p>6 jobs, but that was the first, as such,</p> <p>7 formal job.</p> <p>8 Q. Full-time job?</p> <p>9 A. Full-time job. Yeah.</p> <p>10 Q. Like most of us, you probably had</p> <p>11 summertime jobs and things of that nature</p> <p>12 going through school and that sort of</p> <p>13 thing?</p> <p>14 A. Right.</p> <p>15 Q. All right. And what was your position at</p> <p>16 Alabama Power?</p> <p>17 A. Resident claim agent.</p> <p>18 Q. And did that involve property claims?</p> <p>19 A. All kinds of claims. You had -- At that</p> <p>20 time when I started, you handled some</p> <p>21 workers' comp. You handled property. You</p> <p>22 handled automobile, electrical contracts,</p> <p>23 slip-and-fall, general liability stuff.</p>
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<p>1 MR. SANSPREE: I remember. They</p> <p>2 marked everything</p> <p>3 "Privileged," and the Court</p> <p>4 said it was not privileged.</p> <p>5 You just can't mark a</p> <p>6 document "Privileged" and</p> <p>7 say it's privileged.</p> <p>8 A. Also, the New York thing was also marked</p> <p>9 "Privileged and Confidential" and, yet, it</p> <p>10 was later released.</p> <p>11 Q. Okay. But Mr. Sanspree was not involved</p> <p>12 in this Pebbles case, was he?</p> <p>13 A. No.</p> <p>14 Q. Okay. But you did obtain from</p> <p>15 Mr. Sanspree documents from other</p> <p>16 Provident cases to assist you in your</p> <p>17 investigation and forming opinions in the</p> <p>18 Pebbles case; is that right?</p> <p>19 A. Well, I had been working on the cases. It</p> <p>20 was just coincidental that this one came</p> <p>21 along during the time that I had been</p> <p>22 working on these other cases.</p> <p>23 Q. Okay. All right. If I may go a bit to</p>	<p>1 Q. It did not involve life insurance, did it?</p> <p>2 A. No.</p> <p>3 Q. Okay. Were you terminated from that</p> <p>4 position?</p> <p>5 A. Yes.</p> <p>6 Q. When?</p> <p>7 A. '78.</p> <p>8 Q. How long did you work for Alabama Power?</p> <p>9 A. From '71 to '78.</p> <p>10 Q. Okay. And why were you terminated?</p> <p>11 A. Because of the arrest.</p> <p>12 Q. The marijuana?</p> <p>13 A. The marijuana arrest. Yes, sir.</p> <p>14 Q. And you pled guilty to that, did you not?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever lied under oath in a</p> <p>17 deposition in a civil case, such as this</p> <p>18 one, about the reason you left Alabama</p> <p>19 Power?</p> <p>20 A. No, sir.</p> <p>21 Q. Okay.</p> <p>22 A. I mean, the other case there, where I</p> <p>23 didn't acknowledge that.</p>

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<p>1 Q. Okay. Where you didn't -- I'm sorry. I 2 didn't follow you.</p> <p>3 A. The first case that you talked about with 4 Mr. Miles, where I didn't acknowledge 5 being arrested.</p> <p>6 Q. Oh, yes, sir. I know that. I wasn't 7 asking that same question.</p> <p>8 A. Oh.</p> <p>9 Q. No, sir. Have you ever lied about the 10 marijuana conviction on job applications?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Why did you do that?</p> <p>13 A. Needed a job for my family.</p> <p>14 Q. Okay. It was not that you had forgotten 15 about your marijuana conviction, was it?</p> <p>16 A. Correct.</p> <p>17 Q. After you were terminated from Alabama 18 Power Company, where did you then go to 19 work?</p> <p>20 A. National Producers.</p> <p>21 Q. And what did you do at National Producers?</p> <p>22 A. Majority of the stuff was involving 23 inventory in cemeteries down in Columbus</p>	<p>1 A. Correct.</p> <p>2 Q. Did not --</p> <p>3 A. And subrogation claims.</p> <p>4 Q. Yeah.</p> <p>5 A. Right.</p> <p>6 Q. But the subrogation would, yet and still, 7 generally involve automobile accidents, 8 wouldn't it?</p> <p>9 A. Correct.</p> <p>10 Q. Did not involve life insurance, did it?</p> <p>11 A. No.</p> <p>12 Q. Were you fired from Stonewall Dixie?</p> <p>13 A. Yeah.</p> <p>14 Q. Have you ever lied under oath in 15 depositions in civil cases, wherein you 16 were identified as an expert witness, 17 about whether or not you were fired from 18 Stonewall Dixie?</p> <p>19 A. I don't recall.</p> <p>20 Q. Let's see if I can help you. Do you 21 recall giving a deposition in a case 22 called Brooks versus American Fidelity?</p> <p>23 A. You know, I must have.</p>
<p>1 and Phenix City. Then some small amounts 2 of litigation, but not much.</p> <p>3 Q. Okay. Why did you leave National 4 Producers?</p> <p>5 A. It didn't look like it was going to be a 6 fruitful job.</p> <p>7 Q. Did it go bankrupt?</p> <p>8 A. The company did, I believe.</p> <p>9 Q. Yes, sir. Where did you next become 10 employed?</p> <p>11 A. Stonewall Dixie.</p> <p>12 Q. Is that an insurance company?</p> <p>13 A. Yes.</p> <p>14 Q. Did you go immediately from National 15 Producers to Stonewall Dixie?</p> <p>16 A. I'm not sure what the time lag was. It 17 wasn't real long.</p> <p>18 Q. All right. At Stonewall Dixie, were you 19 involved in adjusting claims?</p> <p>20 A. Yes.</p> <p>21 Q. And were those primarily automobile 22 accident claims and liquor liability 23 claims?</p>	<p>1 Q. Let's do this one the same way, the next 2 number, and then that number as A on page 3 19. 4 (Defendant's Exhibit 4 and 4-A 5 marked for purposes of 6 identification)</p> <p>7 Q. To refresh your recollection, I think it 8 was a case where the plaintiff's lawyer 9 was Archie Lamb.</p> <p>10 A. Okay.</p> <p>11 Q. Does that help you remember?</p> <p>12 A. You know, I know Archie Lamb, but I 13 don't --</p> <p>14 Q. You don't remember who the defense lawyer 15 was?</p> <p>16 A. No.</p> <p>17 Q. That's very disappointing. Look at that.</p> <p>18 A. Was it you?</p> <p>19 Q. What I've done is marked the title page as 20 4, or asked the court reporter to do that, 21 and 4-A, the page in reference which I 22 think is page 19. I think you were 23 answering my questions in that deposition.</p>

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1 A. Okay. 2 Q. What was the question? 3 A. "Why did you leave Stonewall Dixie"? 4 Q. You didn't tell me you had been fired, did 5 you? 6 A. No. 7 Q. Why not? 8 A. Well, I indicated I was basically tired of 9 handling those claims, and I was. 10 Q. Yes, sir. Do you think that was a fair 11 and complete answer? 12 A. I think it covered what you asked. And 13 there was a reduction in force, and that's 14 what Jim Sullivan agreed to. 15 Q. Yes, sir. But that agreement that you 16 signed also referenced that it was an 17 involuntary separation that they were 18 firing you for, wasn't it? 19 A. I believe so. It's been -- I don't know 20 how long since I've seen that. 21 Q. Right. 22 A. But, you know, I feel like I answered the 23 question.	1 being a full response to the question? 2 A. I feel like I answered your question at 3 that point in time. 4 Q. Thank you, sir. 5 That's not the only time you lied 6 about having been fired from Stonewall 7 Jackson, is it? 8 MR. SANSPREE: Object to the 9 form. 10 A. Dixie. 11 Q. Stonewall Dixie Insurance Company. 12 Have you lied in other depositions 13 where you were put up as an expert witness 14 as to the reasons that you left Stonewall 15 Dixie Insurance Company? 16 MR. SANSPREE: Object to the 17 form. 18 A. I don't recall all the answers. 19 Q. Let me show you again this same 20 deposition, Moorer versus Republic 21 American Insurance Company, which we've 22 already marked as Defendant's Exhibit 1. 23 Let me ask the reporter to mark as Exhibit
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1 Q. Yes, sir. 2 A. Because it was true. 3 Q. Right. And you think that's a complete 4 answer to my question, "Why did you leave 5 Stonewall Dixie"? And you said, "I 6 basically was tired of handling automobile 7 claims and the homeowners' claims and 8 wanted something different. And Aetna had 9 an opening in the commercial insurance 10 division. So I went and applied for that 11 and was accepted for that position." You 12 don't think it would have been responsive 13 to my question to let me know, as to my 14 question "Why did you leave Stonewall 15 Dixie," that you remember being fired by 16 Stonewall Dixie? 17 MR. SANSPREE: Object to the 18 form. 19 A. I mean, I felt like I answered the 20 question at the time. To go back and say 21 how I would have answered it umpteen years 22 later, I can't. 23 Q. You're comfortable with that answer as	1 I-B page 25. 2 (Defendant's Exhibit 1-B marked 3 for purposes of identification) 4 Q. Read the bottom of 24 and page 25, which 5 I've marked as 1-B, please, sir. 6 A. Okay. 7 Q. Would you agree with me that you did not 8 give an honest answer to the question on 9 page 25 with regard to your employment at 10 Stonewall Dixie Insurance Company? 11 A. I didn't recall any specific things about 12 that. 13 Q. Oh, you didn't? 14 A. At the time, you know -- 15 Q. Well, let's be a little more clear about 16 it, if I might borrow it back. I hate to 17 go back and forth, but it's the only copy 18 I have with me. 19 A. All right. 20 Q. The question was -- and I was not the 21 defense attorney involved in that. But it 22 starts at the bottom of page 24, and the 23 question is, "Now, before we get to Aetna,

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<p>1 was there any time at Alabama Power 2 Company when you were disciplined or 3 criticized about your job"? And your 4 answer was "No"; is that correct?</p> <p>5 A. Right.</p> <p>6 Q. And that's not true either, is it?</p> <p>7 A. Well, it wasn't about my job.</p> <p>8 Q. Oh, okay. I withdraw the question.</p> <p>9 The question in this Exhibit 1-B, 10 "How about when you were at National 11 Producers"? And you said "No." And the 12 question, "And Stonewall"? "And when I</p> <p>13 say "criticized," I'm talking about any 14 complaints, oral or written, any 15 reprimands, oral or written, discipline 16 for any reason." And you said, "I don't 17 recall any specific things at Stonewall 18 Dixie."</p> <p>19 A. Yes.</p> <p>20 Q. You don't consider having been fired from 21 Stonewall Dixie a disciplinary action?</p> <p>22 A. Well, I mean, as far as the way I consider 23 that, I blew the whistle on some illegal</p>	<p>1 American?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And whether or not you think it was 4 appropriate or not, you do consider a 5 termination from a job a disciplinary 6 action, don't you?</p> <p>7 A. I guess it can be. I mean, I considered 8 what happened was a whistle-blowing 9 retribution. So, I mean, as far as what 10 they write down, they can write anything 11 they want down to criticize you, 12 after-the-fact-type thing. But I blew the 13 whistle, and they terminated me and 14 terminated a lot of folks within the 15 claims department.</p> <p>16 Q. Okay. And you don't agree with their 17 action in terminating you, do you?</p> <p>18 A. Correct.</p> <p>19 Q. But, nevertheless, it was disciplinary, 20 wasn't it?</p> <p>21 MR. SANSPREE: Object to the 22 form.</p> <p>23 A. You think whatever -- You know, that's --</p>
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<p>1 activities that were taking place in the 2 company. And I felt like, you know, there 3 was retribution taken against me for 4 blowing the whistle.</p> <p>5 Q. What did you blow the whistle on?</p> <p>6 A. Folks stealing money and stealing 7 property.</p> <p>8 Q. Who stole money?</p> <p>9 A. Folks out of Florida.</p> <p>10 Q. What are their names?</p> <p>11 A. I don't recall the names. I found out in 12 the subro where checks were going out. 13 And then the president of Stonewall at the 14 time converted a vehicle to his own use 15 out of salvage.</p> <p>16 Q. Who was that?</p> <p>17 A. Jim Sullivan.</p> <p>18 Q. Okay. Well, did you report that to the 19 stockholders?</p> <p>20 A. I reported it to the Great American.</p> <p>21 Q. To Great American?</p> <p>22 A. Yeah.</p> <p>23 Q. Was Stonewall Dixie a subsidiary of Great</p>	<p>1 You know --</p> <p>2 Q. Do you consider that it was not 3 disciplinary?</p> <p>4 A. Well, "disciplinary" is more of, you know, 5 trying to change things. I mean, all I 6 did was end up getting the ax. So, you 7 know, there's a difference between 8 discipline and just having the ax fall on 9 you.</p> <p>10 Q. On this same page, Exhibit 1-B, you 11 answered a moment ago that you had never 12 lied about the reason you left Alabama 13 Power Company. On this same page of the 14 exhibit, on page 20 and 21 of this same 15 deposition, you did, in fact, lie about 16 the reason why you left Alabama Power, 17 didn't you?</p> <p>18 MR. SANSPREE: He's already said 19 that, though. Because 20 that's the same deposition 21 where he denied the 22 marijuana arrest.</p> <p>23 MR. BUTLER: That's right. But</p>

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<p>1 he answered a moment ago 2 that he had never lied about 3 the reason he left Alabama 4 Power.</p> <p>5 MR. SANSPREE: He tried to point 6 to that --</p> <p>7 MR. BUTLER: The Record will 8 speak for itself.</p> <p>9 MR. SANSPREE: He tried to point 10 you to the deposition a 11 second ago.</p> <p>12 MR. BUTLER: Could be my 13 misunderstanding, but the 14 Record will speak for 15 itself.</p> <p>16 Q. Look at Exhibit 1-B, and the pages that 17 are referenced, I think, are 20 and 21.</p> <p>18 A. "Why did you leave Alabama Power Company? 19 I had a better opportunity with National 20 Producers. Is that the only reason you 21 left? Yes."</p> <p>22 Q. And that's not the truth, is it?</p> <p>23 A. Correct.</p>	<p>1 for the plaintiff?</p> <p>2 A. Yes.</p> <p>3 Q. Thank you.</p> <p>4 Have you ever lied about the reason 5 you left Stonewall Dixie on employment 6 applications?</p> <p>7 A. That would have been related to Aetna. 8 Yeah. I had answered that question 9 before.</p> <p>10 Q. Well, on the Aetna application, you said 11 that you lied about your termination with 12 Alabama Power, on the Aetna application. 13 You also lied about the reason you left 14 Stonewall Dixie Insurance Company to 15 Aetna, didn't you?</p> <p>16 A. The reason I -- What I stated to Aetna was 17 my conversation with Jim Sullivan, who 18 said that he would back me on a reduction 19 in force; that that would be an 20 explanation he would give to my employer. 21 And Aetna called Sullivan, talked with 22 him, and he explained my abilities, and 23 they hired me.</p>
<p>1 Q. And you knew it was not the truth at the 2 time you gave the answer?</p> <p>3 A. Yes.</p> <p>4 Q. Why did you answer knowingly something 5 that was untrue when you had sworn to give 6 testimony under oath?</p> <p>7 A. Again, you know, I made a judgment error 8 on not admitting my arrest or being fired.</p> <p>9 Q. It was just a judgment error?</p> <p>10 A. I consider it a judgment error. Yes, sir.</p> <p>11 Q. You consider giving false testimony under 12 oath a judgment error?</p> <p>13 A. I mean --</p> <p>14 Q. Is that right?</p> <p>15 A. I'd have to think about that. I mean, I 16 made some judgment errors on the status of 17 employment.</p> <p>18 Q. Do you want to answer it any further, or 19 is that your answer?</p> <p>20 A. That's my answer.</p> <p>21 Q. Thank you.</p> <p>22 This is the deposition where Dee 23 Miles with Beasley, Allen was the lawyer</p>	<p>1 Q. So your position in not telling Aetna the 2 truth on your application was based upon 3 somebody else agreeing not to tell the 4 truth; is that right?</p> <p>5 A. It was based on an agreement I had with 6 the company on the reason that they would 7 say for my leaving.</p> <p>8 Q. Thank you.</p> <p>9 When did you go to work for Aetna?</p> <p>10 A. July of '83.</p> <p>11 Q. Okay. And what type of work did you do at 12 Aetna, please, sir?</p> <p>13 A. Commercial claims. Started out in 14 commercial claims.</p> <p>15 Q. I think I know what you're talking about. 16 But so that the jury will know, what are 17 we talking about when we speak of 18 commercial claims?</p> <p>19 A. Commercial claims would be like businesses 20 -- mainly it would be a business 21 environment, workers' comp-type claims. 22 It would --</p> <p>23 Q. Casualty claims?</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. Casualty claims, bonds, fidelity bonds, 2 surety bonds, reclamation bonds. 3 Q. Business interruption claims? 4 A. Business interruption. Any type business 5 insurance. 6 Q. It did not involve life insurance, did it? 7 A. No. 8 Q. While at Aetna, were you ever criticized 9 for your claims-adjusting; that Aetna felt 10 like it placed the company at unreasonable 11 and unnecessary risk? 12 A. I had seen one criticism on that. I got 13 praised and got bonuses for doing good. 14 Q. Yes, sir. 15 A. And any criticism I had was a very small 16 percentage of the thousands of claims I 17 had. So to me that's just inherent in the 18 claims. 19 Q. Because, like everyone else, claims 20 adjusters make errors every day, don't 21 they, maybe not every day? 22 A. Maybe not every day. 23 Q. But they make errors?</p>	<p style="text-align: right;">Page 47</p> <p>1 review the policy to determine whether 2 Alabama Power was even a named insured 3 under the policy? 4 A. We had contractual coverage. 5 Q. Was Alabama Power the named insured under 6 the policy that you were making the offer 7 on? 8 A. I don't recall. 9 Q. Was it generally your practice to review 10 the policy involved in the course of your 11 claims investigation and adjusting? 12 A. And contracts. Any contracts that would 13 have existed between the insureds and the 14 Power Company. 15 Q. All right. How long did you work for 16 Aetna? 17 A. For who? 18 Q. For Aetna. 19 A. Oh, okay. That was between '83 to 20 December of '92. 21 Q. Okay. Why did you leave Aetna? 22 A. My job was eliminated. 23 Q. Okay.</p>
<p style="text-align: right;">Page 46</p> <p>1 A. They make errors. 2 Q. And you're not exempt from that, are you? 3 A. Correct. I mean, people have different 4 thoughts about the way things are going to 5 be handled. And, I mean, on one of them 6 they had, I was criticized. So they 7 didn't want me to handle the claim. And 8 what did they do? They gave me the claim 9 anyway. So -- 10 Q. Okay. And do you recall an instance where 11 you made an in excess of a half million 12 dollar offer on behalf of Alabama Power 13 that had been sued? 14 A. Oh, that -- I don't know whether it was a 15 half-million dollar offer. I think it was 16 a contractual defense that was owed to 17 Alabama Power, as a result of a cable 18 company that was attaching to a power 19 pole, that agreed to indemnify Alabama 20 Power if anything happened on their 21 property. 22 Q. Yes, sir. Do you recall your error being, 23 in that situation, where you did not</p>	<p style="text-align: right;">Page 48</p> <p>1 A. And that's contrary to Chadwick saying I 2 was fired, which was an outright lie. 3 Q. Chadwick was one of your supervisors, 4 wasn't he? 5 A. For a short period of time. He wasn't 6 there that long. 7 Q. Was he your supervisor when you left? 8 A. No. No. He was an assistant manager. I 9 had a supervisor that was between him. 10 Q. So, basically, he supervised your 11 supervisor? 12 A. Yes. 13 Q. Okay. Therefore, do you think he would be 14 in a position to know why you left Aetna? 15 A. You know, he got up there and lied. So, 16 you know, I think it was, you know, 17 uncalled-for what he did. But he lied and 18 I couldn't do anything about it. 19 Q. But he did testify under oath that you 20 were fired, didn't he? 21 A. That's right. And that wasn't the case. 22 Q. Okay. You say your job was eliminated? 23 A. Yes.</p>

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<p style="text-align: right;">Page 49</p> <p>1 Q. Okay. And where were you working for 2 Aetna at the time? 3 A. Birmingham. 4 Q. There were people still in the Birmingham 5 Aetna office when you left, weren't there? 6 A. It had shrunk significantly. 7 Q. Had you been demoted by Aetna before you 8 left? 9 A. Yes. 10 Q. Why? 11 A. It was on the way I was handling the 12 claims. But they still gave me the same 13 claims. They didn't change anything. I 14 received the same pay. Got the same 15 claims. Continued to handle the same 16 stuff for the entire period I was there. 17 Q. Have you ever testified that you were 18 deselected for new positions from Aetna in 19 Birmingham when you left? 20 A. I guess I may have. I recall the word 21 "deselected." 22 Q. It was your word, wasn't it? 23 A. Huh?</p>	<p style="text-align: right;">Page 51</p> <p>1 consulting business, is that right, the 2 same business you're in today? 3 A. Yes. 4 Q. And what does that business generally 5 involve, please, sir? 6 A. I do some investigation from time to time 7 for -- I've done some for insurance 8 companies, for individuals, for attorneys. 9 Most of it involved expert witness work. 10 But it's generally a combination of expert 11 witness work and some investigation work. 12 Q. All right, sir. With regard to your 13 income, what overall -- it doesn't have to 14 be exact. But, in general, what is your 15 percentage of your income that comes from 16 being a professional witness in insurance 17 matters? 18 A. Majority of it. 19 Q. More than 75 percent? 20 A. I mean, it can vary from year-to-year as 21 far as what happens there. But probably 22 75 percent, at least. 23 Q. Okay. Are you a member of any expert</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. It was your word, wasn't it? 2 A. I believe so. 3 Q. Okay. Do you believe you were unjustly 4 criticized for your claims-handling 5 activities at Aetna? 6 A. Yes. 7 Q. Has your work for any of these insurance 8 companies that you worked for ever 9 involved the handling or adjusting of life 10 insurance claims? 11 A. No. 12 Q. Okay. Have you ever worked as a life 13 claims adjuster? 14 A. No. 15 Q. Have you ever been licensed as a life 16 insurance agent? 17 A. No. 18 Q. And have you ever taken any life insurance 19 courses? 20 A. I can't remember whether AIC had some life 21 insurance in that. They may or may not 22 have. I don't recall. 23 Q. When you left Aetna, you went into the</p>	<p style="text-align: right;">Page 52</p> <p>1 witness groups or associations, such as 2 TASA or anybody like that? 3 A. I was at one time. 4 Q. Now are you? 5 A. No. 6 Q. Do you have any type of an advertising 7 brochure or website that you use to let 8 people know what you're holding yourself 9 out as an expert in? 10 A. No. 11 Q. Do you hold yourself out to those that 12 might be interested in hiring you as a 13 consultant as an expert in the field of 14 life insurance claims? 15 A. Yes. 16 Q. Oh, you do? 17 A. Yes. 18 Q. On what basis do you contend that you are 19 an expert in life insurance claims? 20 A. Because the principles of investigation 21 and coverage analysis are consistent in 22 life insurance claims as they are other 23 claims.</p>

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<p>1 Q. How do you know that if you've not taken 2 any courses on life insurance claims and 3 you've not worked as a life insurance 4 claims examiner?</p> <p>5 MR. SANSPREE: Object to the 6 form.</p> <p>7 A. That'd be from handling various cases in 8 which you review the manuals of the 9 various companies, on those that might 10 have a manual that, you know, say what's 11 involved, and it's consistent -- I believe 12 it's just years of reviewing multiple, 13 different companies' policies and 14 procedures. And, you know, the aspects of 15 the investigation and coverage analysis 16 are all consistent with what you do on an 17 insurance claim.</p> <p>18 Q. So then your expertise in life insurance 19 and life insurance claims have come from 20 your involvement as a professional witness 21 hired in connection with cases involving 22 life insurance; is that right?</p> <p>23 A. Yes.</p>	<p>1 Q. Okay. What kind of claim was it? 2 A. That was employee theft. 3 Q. Employee theft. Okay. 4 A. Yeah. 5 Q. You are correct. I've got the wrong one 6 in my mind.</p> <p>7 (Brief recess) 8 (Defendant's Exhibit 5 and 5-A 9 marked for purposes of 10 identification)</p> <p>11 Q. Let me show you what's been marked as 12 Defendant's Exhibit 5, which is a case 13 called American Pioneer Life Insurance 14 Company versus Transportation Techniques, 15 Inc. and John Esposito. Do you remember 16 that case? It involved Dee Miles with the 17 Beasley, Allen firm for the plaintiff -- 18 excuse me. I think it was a dec action -- 19 for the defendant, and William Wood as the 20 plaintiff lawyer filing the dec action.</p> <p>21 A. I remember the name Esposito, but I don't 22 remember much specifics about the case. 23 Q. All right. Let me ask you to look at</p>
<p>1 Q. Okay. How many cases have you been 2 employed as an expert witness in life 3 insurance?</p> <p>4 A. I don't know.</p> <p>5 Q. You have no idea?</p> <p>6 A. No.</p> <p>7 Q. Can you think of more than one, not 8 counting this case?</p> <p>9 A. Not counting this case? I don't recall. 10 I couldn't tell you specifically. I know 11 there have been others, but I just don't 12 recall which cases they are.</p> <p>13 Q. There was one where Bill Wood at Norman, 14 Wood in Birmingham was the defense lawyer, 15 wasn't he, that again Dee Miles was the 16 plaintiff's lawyer?</p> <p>17 A. I don't know what case you're talking 18 about.</p> <p>19 Q. The case of Mobile Scottish Rite Bodies 20 versus New Hampshire Insurance Company.</p> <p>21 A. That wasn't a life claim.</p> <p>22 Q. It wasn't?</p> <p>23 A. No.</p>	<p>1 Exhibit 5-A, which is the bottom of page 2 16 in the deposition, and read -- I've 3 taken the time to highlight the question 4 and the answer there. You can read any 5 portion of it you'd like. But that's what 6 I'm going to be asking you about.</p> <p>7 A. The top of 16?</p> <p>8 Q. I think it's the highlighted portion.</p> <p>9 A. Okay.</p> <p>10 Q. This question asks you whether you had in 11 the past ever claimed to have experience 12 in reviewing, supervising or actually 13 handling life insurance claims, didn't it?</p> <p>14 A. Yes.</p> <p>15 Q. And it says, "Do you ever recollect where 16 you've taken that position?" And your 17 answer was "No"; isn't that right?</p> <p>18 A. That's what's down there.</p> <p>19 Q. Is that correct? Did you answer 20 truthfully there?</p> <p>21 A. Which question are you talking about?</p> <p>22 Q. Right here (indicating).</p> <p>23 A. Okay. I'm sorry. I was on the wrong</p>

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<p style="text-align: right;">Page 57</p> <p>1 page. Okay. I mean, it was coincidental 2 on life insurance claims. I mean, that 3 would --</p> <p>4 Q. Yes, sir. But this asks whether you had 5 in the past ever claimed to have had 6 experience in reviewing, supervising or 7 actually handling life insurance claims.</p> <p>8 A. Well, reviewing. You know, I mean, 9 there's a difference between being an 10 expert as a witness and a consultant, 11 where you're reviewing claims and looking 12 at stuff that may never go to a expert or 13 -- I mean, you can do work as a consultant 14 that you don't necessarily handle as an 15 expert. So there are a couple of 16 different things involved there. So you 17 can be involved with reviewing stuff and 18 still not have handled the thing on a -- 19 you know, from an insurance company 20 perspective.</p> <p>21 Q. I see. And I understand you're not a 22 lawyer, are you, sir?</p> <p>23 A. Correct.</p>	<p style="text-align: right;">Page 59</p> <p>1 of life insurance claims-handling or an 2 adjuster, would you?</p> <p>3 A. Well, I mean, as far as a consultant, you 4 may be looking at it from the claims 5 adjuster's perspective, and giving a 6 review of claims-handling procedures as it 7 relates to a claim. Again, you're going 8 to have --</p> <p>9 Q. Well, maybe I better ask it this way. And 10 I don't mean to cut you off. But what is 11 your view, as a consultant, not in the 12 legal --</p> <p>13 (Brief interruption)</p> <p>14 Q. Let me ask this: I need to get your 15 understanding what enables you to give 16 expert opinion testimony on a subject 17 matter. And let me finish my question. 18 It's going to be kind of a long question. 19 But what I'm interested in, you are here 20 expressing opinions in this case on life 21 insurance claims-handling. You've told me 22 that you do not have recollection of any 23 courses on life insurance.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And, so, I don't mean for this 2 question to be addressed to you in the 3 capacity of a lawyer. It's not a legal 4 question. Because Mr. Sanspree will 5 object to that, and I don't want him to 6 object. But, nevertheless, you told me a 7 moment ago that you had gained your 8 experience in life insurance as a 9 professional witness in reviewing life 10 insurance claims manuals, and life 11 insurance policies, and things of that 12 nature, and working on cases as a 13 consultant, professional witness; isn't 14 that right?</p> <p>15 A. Yeah. I mean, you would have life 16 insurance stuff that would be involved 17 with accidental deaths and stuff like 18 that.</p> <p>19 Q. Right.</p> <p>20 A. Where you would have inquiries and then 21 you'd look at, you know, potential for 22 subro or whatever involved in the thing.</p> <p>23 Q. But you wouldn't be acting in the capacity</p>	<p style="text-align: right;">Page 60</p> <p>1 A. I didn't say that. I just said I didn't 2 recall what was in the AIC courses that 3 may have related to life insurance.</p> <p>4 Q. Is that different from what I said?</p> <p>5 A. Yeah. You're saying that, you know, I 6 never looked at any stuff.</p> <p>7 Q. No, I didn't. I said that you don't 8 recall having taken any life insurance 9 courses. Is that wrong?</p> <p>10 A. Well, I wasn't ruling it out. To me, your 11 question is ruling it out.</p> <p>12 MR. BUTLER: Read my question 13 back, please, ma'am.</p> <p>14 (Requested portion of Record 15 read by the Reporter)</p> <p>16 Q. Do you have recollection of life insurance 17 courses?</p> <p>18 A. Again, I don't recall what was in the AIC 19 group of courses as to -- you know, 20 because that falls under personal 21 insurance, which you can have a lot of 22 things under personal insurance. So --</p> <p>23 Q. Yes, sir. But, I mean, we may be</p>

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<p>1 quibbling with words here and 2 understanding of words. But let me be 3 sure that I've got your testimony correct. 4 Do you recall having taken any life 5 insurance courses?</p> <p>6 A. Again, specifically on life alone --</p> <p>7 Q. I didn't say life alone.</p> <p>8 A. Again, I don't recall what's in the four 9 different courses, as to whether some of 10 the personal insurance is covered on life.</p> <p>11 Q. Okay.</p> <p>12 A. So --</p> <p>13 Q. All right. All right. And I think you 14 told me that you gained your knowledge and 15 experience on life insurance claims from 16 your work as a professional witness hired 17 to consult on life insurance cases; isn't 18 that correct?</p> <p>19 A. Yes. To me it's training, education, job 20 experience, job knowledge, and having been 21 through multiple companies and their 22 procedures manuals, for those companies 23 that have procedures manuals.</p>	<p>1 manuals and procedures, for which Globe 2 says they have no manuals and procedures 3 or guidelines to go by. So I'm used to 4 reviewing industry standards and reviewing 5 the standards of the various companies. 6 But in this case they say they don't have 7 any. So, you know, for me, I think I'm 8 more qualified on handling claims relative 9 to this. I mean, even 10 Ms. What's-her-name, she states she didn't 11 even know what a reservation of rights was 12 -- Ms. Whitaker said she didn't know what 13 a reservation of rights was after thirty 14 years of being in insurance.</p> <p>15 Q. Right.</p> <p>16 A. So it's those type things. You know, it's 17 one-on-one. "I don't know anything about 18 reservation of rights. And we don't have 19 any claims or procedures manual, and 20 everything is one-on-one training." So 21 that to me -- I've had a lot more training 22 and experience than these folks who go 23 around operating without manuals or</p>
<p>1 Q. Yes, sir.</p> <p>2 A. And the difference in this case is --</p> <p>3 Q. I didn't ask you that.</p> <p>4 A. Well --</p> <p>5 Q. I will, though.</p> <p>6 A. I mean, but -- I mean, the fact of the 7 matter is, the way it's going, the folks 8 testify that they have no training 9 manuals. So, I mean, I've had the benefit 10 of reviewing multiple companies' manuals 11 and procedures, for which this company 12 says they don't have any manuals or 13 procedures, and it's one-on-one training 14 and word-of-mouth.</p> <p>15 Q. Yes, sir.</p> <p>16 A. Now, that to me -- I've had much more 17 experience than any of these folks have, 18 because all of theirs is word-of-mouth 19 without any procedures.</p> <p>20 Q. In life insurance claims you've had much 21 more experience?</p> <p>22 A. Well, as far as going through and 23 understanding industry standards and</p>	<p>1 procedures.</p> <p>2 Q. Yes, sir. You would agree with me that 3 different kinds of insurance, be it life 4 insurance versus property and casualty, 5 for example, would have different 6 procedures and different terminology that 7 would apply to them, wouldn't you?</p> <p>8 A. Some would be consistent. Some might be a 9 little different.</p> <p>10 Q. Tell me, please, sir, how the terminology 11 of reservation of rights could possibly 12 apply in a life insurance claim.</p> <p>13 A. Because of having a coverage situation. 14 And it's my experience that whenever 15 you've got a coverage dispute, you should 16 notify the insured of the coverage 17 dispute. And I know a lot of companies 18 take the position, "Well, you don't have 19 to do that." But when you've got a 20 coverage issue, it's been my thing that 21 you advise the insured and let them know.</p> <p>22 Q. What is your understanding of the term in 23 the insurance industry, in general, of the</p>

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<p>1 term "reservation of rights"?</p> <p>2 A. That's advising the insured of a coverage 3 situation for which there is a issue as to 4 whether or not it's coverage. You define 5 what's in the policy. You define what's 6 in the -- or what the situation is. And 7 that there is a question between the 8 policy coverages and the situation of the 9 individual filing the claim.</p> <p>10 Q. Do you know of any place in the insurance 11 industry where the term "reservation of 12 rights" is used, except in the liability 13 insurance context, where a liability 14 insurance carrier is proceeding to defend 15 its insured in a liability claim, but 16 reserving its rights and defenses to 17 challenge coverage in indemnity?</p> <p>18 A. I mean, usually it bonds to me; any time 19 you had a question of coverage, you advise 20 the insured and you reserve your rights.</p> <p>21 Q. Okay. So we've said liability insurance 22 carriers for casualty claims and for 23 bonds. Can you tell me anywhere in the</p>	<p>1 but it's not liability coverage per se. 2 But, I mean, there is a liability for the 3 coverage that you've written.</p> <p>4 Q. You're saying that life insurance 5 coverage --</p> <p>6 A. No.</p> <p>7 Q. -- is the same as liability coverage?</p> <p>8 A. No, I'm not.</p> <p>9 MR. SANSPREE: Object to the 10 form.</p> <p>11 Q. Thank you.</p> <p>12 MR. BUTLER: Please, ma'am, mark 13 this as our next exhibit, 14 and specifically the page 15 number that the witness has 16 referred us to, being --</p> <p>17 THE WITNESS: Basically it's that 18 chapter.</p> <p>19 Q. The whole chapter, Chapter 4?</p> <p>20 A. Yeah. I'll say Chapter 4.</p> <p>21 MR. BUTLER: -- Chapter 4 of this 22 book. And I would ask the 23 court reporter to mark this</p>
<p>1 insurance industry than it's used other 2 than that?</p> <p>3 MR. SANSPREE: Object to the 4 form.</p> <p>5 A. In the liability claims practices, which 6 is broad-based, and this is a 7 authoritative insurance document -- or 8 treatise, and it references the use of the 9 reservation of rights where you've got 10 questions of coverage. So --</p> <p>11 Q. And it talks about liability coverage?</p> <p>12 A. It's speaking -- Basically, it's speaking 13 generic. Whenever you've got -- I mean, 14 it is the liability claims. It doesn't 15 say --</p> <p>16 Q. That's the entire title of this whole 17 treatise is "Liability Insurance Claim 18 Practice" -- or "Liability Claim 19 Practices"?</p> <p>20 A. Right.</p> <p>21 Q. We're not dealing here with liability 22 coverage, are we?</p> <p>23 A. Well, it's a form of liability coverage,</p>	<p>1 and --</p> <p>2 THE WITNESS: We need to make a 3 copy of that.</p> <p>4 MR. BUTLER: -- to mark this as 5 our next numbered exhibit, 6 Chapter 4, that is the 7 chapter the witness relies 8 on for his testimony, and 9 then return it to 10 Mr. Sanspree so that 11 Mr. Allen will have it back.</p> <p>12 THE WITNESS: I just don't want 13 to put a sticker on there 14 because it'll tear the cover 15 up.</p> <p>16 (Off-the-Record discussion)</p> <p>17 MR. BUTLER: Put a note on there 18 for our exhibit number for 19 the cover and first -- the 20 Roman numeral pages to 21 describe the edition, and 22 then Chapter 4, please, 23 ma'am.</p>

17 (Pages 65 to 68)

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1	(Defendant's Exhibit 6 and 6-A	1	in?
2	marked for purposes of	2	A. I don't recall. I didn't --
3	identification)	3	Q. Are there any?
4	Q. You told me that your experience with	4	A. I don't recall. You know, I don't keep
5	regard to life insurance claims was	5	track of stuff like that.
6	limited to your investigation as a	6	Q. Well, you keep a list of them, don't you?
7	professional witness of civil cases in	7	A. I've got a list, but that doesn't
8	which you've been hired.	8	necessarily mean what type it is.
9	A. And a consultant.	9	Q. Well, look at whatever you need to know.
10	Q. And a consultant in those cases, right?	10	If that's the basis of your expertise, I
11	A. Yes, sir.	11	need to know what other life insurance
12	Q. All right. This particular case, American	12	benefit cases that you have been involved
13	Pioneer Life versus Transportation	13	in.
14	Techniques, did involve life insurance,	14	A. I don't recall.
15	didn't it?	15	Q. You can't tell me any?
16	A. I don't recall it specifically involving	16	A. Well, I don't recall.
17	life.	17	Q. Okay.
18	Q. Well, you identified it as -- Just a	18	A. I just don't recall all of them.
19	moment.	19	Q. Can you tell me there have been more than
20	(Defendant's Exhibit 7 marked	20	this one marked Defendant's Exhibit 5?
21	for purposes of identification)	21	A. As a consultant or as an expert?
22	Q. Let me show you Exhibit 7. That comes	22	Q. Either.
23	from your own documents, doesn't it?	23	A. I know I've had numerous ones, but I just
Page 70		Page 72	
1	A. Yes.	1	don't recall the names.
2	Q. And there you describe that case as a life	2	Q. Can you tell me anything about them, who
3	insurance benefits case, don't you?	3	the lawyers were, what court they were in
4	A. Oh, okay. You're talking about -- I've	4	or anything?
5	just got number 8 as "Denial of Life	5	A. No, sir.
6	Insurance Benefits." I didn't have the	6	Q. Okay. You have expressed opinions about
7	name.	7	industry standards in this case with
8	Q. You didn't have the name of the case, but	8	regard to life insurance claims-handling,
9	you've got the names of the lawyers, don't	9	have you not?
10	you?	10	A. Yes.
11	A. Yes.	11	Q. Okay. Where do you get your knowledge of
12	Q. And they're Dee Miles and Bill Wood,	12	industry standards with regard to
13	aren't they?	13	adjusting and handling life insurance
14	A. Yes.	14	claims, except for serving as a consultant
15	Q. And certainly there were questions in that	15	or an expert witness in other civil cases?
16	deposition that you've seen about life	16	A. And reviewing treatises and claims manuals
17	insurance, weren't there?	17	and procedures manuals.
18	A. Yes.	18	Q. What treatises have you reviewed?
19	Q. Does that refresh your recollection that	19	A. That's one that I had had and read from a
20	this was a life insurance benefits case?	20	long time ago that has stuff on life.
21	A. Yes, sir.	21	Q. Okay. Can you, to save us time so that I
22	Q. What others have you served as a	22	won't have to read this treatise, can you
23	professional expert or consultant witness	23	narrow it any for me by telling me which

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<p style="text-align: right;">Page 73</p> <p>1 section or chapter or page that you would 2 rely upon for the subject of knowledge of 3 industry standards in handling of life 4 insurance claims?</p> <p>5 A. That would be under Chapter 10.</p> <p>6 Q. Okay.</p> <p>7 A. Looks like page 235 to 265.</p> <p>8 Q. Might I borrow it a moment? Show me, 9 Mr. Allen, where in Chapter 10 of this 10 book, "Personal Insurance" by J. J. 11 Lonnie, George Raider, Donald Oakes, 1st 12 Edition, 1987, show me in Chapter 10, that 13 you've identified, what portion of that 14 chapter you rely upon with regard to your 15 opinions in this case, with regard to 16 claims-handling procedures for life 17 insurance claims.</p> <p>18 A. I don't think this discusses 19 claims-handling procedures.</p> <p>20 Q. Doesn't discuss it at all, does it?</p> <p>21 A. Correct. And that's what I was telling 22 you, that the liability claims practices 23 of the claims-adjusting procedures have</p>	<p style="text-align: right;">Page 75</p> <p>1 dealing with life insurance claims?</p> <p>2 A. No, sir.</p> <p>3 Q. Thank you.</p> <p>4 A. Well, Bibb Allen's book. I've relied on 5 that for the aspects of acceptance of the 6 premium.</p> <p>7 Q. On the waiver issue?</p> <p>8 A. Waiver, yeah.</p> <p>9 Q. Okay. And you think his treatise is -- 10 And you've cited a case in your report. 11 Does that comes from Bibb Allen's book?</p> <p>12 A. Yes.</p> <p>13 Q. You don't pretend to have expertise in the 14 law governing insurance, do you?</p> <p>15 A. What do you mean?</p> <p>16 Q. Well, you don't hold yourself out as an 17 expert in insurance law, do you?</p> <p>18 A. No. I'm not a Lawyer. So I'm not 19 rendering any legal opinions.</p> <p>20 Q. Thank you.</p> <p>21 A. I mean, I can read the information that 22 comes, that's common in the insurance 23 industry, to receive case law and other</p>
<p style="text-align: right;">Page 74</p> <p>1 basic concepts that are involved in 2 investigating and handling claims that 3 are, you know, consistent for all types of 4 insurance policies.</p> <p>5 Q. And you're referring again to Exhibit 6?</p> <p>6 A. Well, that and, you know, you have, you 7 know, claims procedures in the property 8 end of the thing.</p> <p>9 Q. And you're showing me now a book called 10 "Adjustment of Property Losses."</p> <p>11 A. But it has some unfair claims practices, 12 which is what I was looking at on some of 13 this on fair claims-handling.</p> <p>14 Q. All right. We'll get to that in a moment. 15 Keep that handy for me. But it doesn't 16 have anything on life insurance claims, 17 does it?</p> <p>18 A. Which one? On property? No.</p> <p>19 Q. What is the name of it?</p> <p>20 A. "Adjustment of Property Losses." It has 21 unfair claims practices in there.</p> <p>22 Q. Any other treatises that you've relied 23 upon to form your opinions in this case</p>	<p style="text-align: right;">Page 76</p> <p>1 documents from various sources regarding 2 how claims are handled. So it's not 3 unusual to see case law as an adjuster for 4 handling claims.</p> <p>5 Q. All right. You and I had a discussion a 6 moment ago about the term, quote, 7 "reservation of rights," end quote.</p> <p>8 A. Right.</p> <p>9 Q. You use also the term, quote, "nonwaiver," 10 end quote --</p> <p>11 A. Right.</p> <p>12 Q. -- in your report on this case, don't you?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What does nonwaiver have to do with life 15 insurance claims-handling?</p> <p>16 A. Well, nonwaiver is in the same purview as 17 a reservation of rights, in that it's just 18 a -- Generally, a nonwaiver is a 19 standardized form-type thing, although it 20 can be manuscripted out, and basically 21 says you're investigating the claim, and 22 you'll get back with the insured at a 23 later time. I mean, that's --</p>

19 (Pages 73 to 76)

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<p style="text-align: right;">Page 77</p> <p>1 Q. That's your understanding of "nonwaiver"?</p> <p>2 A. Well, "nonwaiver" is you set out that you</p> <p>3 have a claim. You're looking at the</p> <p>4 claim. There may be a question of</p> <p>5 coverage. You know, you're reserving your</p> <p>6 rights to review the coverage aspects, and</p> <p>7 then you'll advise thereafter.</p> <p>8 Q. But what you're doing in that is, you're</p> <p>9 offering to defend the insured in a</p> <p>10 liability context, while you are reserving</p> <p>11 the right to challenge coverage issues,</p> <p>12 aren't you?</p> <p>13 A. You would use the reservation of rights,</p> <p>14 or a nonwaiver, in first-party.</p> <p>15 First-party fire has a lot of reservation</p> <p>16 of rights and nonwaivers involved. So you</p> <p>17 see that -- you see it a lot in, you know,</p> <p>18 the fire-type claim, or any first-party</p> <p>19 claim where there's a question of coverage</p> <p>20 involving the insured.</p> <p>21 Q. Have you ever seen it used in the life</p> <p>22 insurance context?</p> <p>23 A. Not yet.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. Not at this time.</p> <p>2 Q. Well, this is the only time I've got to</p> <p>3 ask you.</p> <p>4 A. I know. I haven't seen anything.</p> <p>5 Q. Neither have I.</p> <p>6 A. But, you know, if I go looking, I may find</p> <p>7 something. If I do, I will let you know.</p> <p>8 Q. I'd appreciate it.</p> <p>9 Have you ever been a plaintiff or a</p> <p>10 defendant in a lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What types of cases have you been a</p> <p>13 plaintiff in?</p> <p>14 A. As a landlord, as an individual.</p> <p>15 Q. Were you other than an individual in your</p> <p>16 landlord cases?</p> <p>17 A. No. I was an individual in landlord</p> <p>18 cases. Then sued a few folks. Dismissed</p> <p>19 the last suit I filed against an</p> <p>20 individual from Mobile -- or two</p> <p>21 individuals in Mobile. Didn't dismiss</p> <p>22 that one. Venue was changed.</p> <p>23 Q. What was that case about?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Neither have I.</p> <p>2 A. If the person doesn't even know what a</p> <p>3 reservation of rights is, it's hard for</p> <p>4 them to use one.</p> <p>5 Q. Or if a person has no need of application</p> <p>6 of the term "reservation of rights,"</p> <p>7 there's no need to use one?</p> <p>8 A. I'd disagree with that. Because any time</p> <p>9 you've got a question of coverage, there's</p> <p>10 a need. And as a claims manager, you're</p> <p>11 going to run into situations involving</p> <p>12 coverage. So if you've got twenty-five,</p> <p>13 thirty years experience and you don't even</p> <p>14 know how to reserve rights, or when to</p> <p>15 question coverage, or notice coverage</p> <p>16 questions --</p> <p>17 Q. Can you point me to any -- any</p> <p>18 authoritative source that would suggest</p> <p>19 that the terms, quote, "reservation of</p> <p>20 rights," end quote, or the term, quote,</p> <p>21 "nonwaiver," end quote, has a place and</p> <p>22 application in the context of handling</p> <p>23 life insurance claims?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Individual was interfering in my father's</p> <p>2 funeral.</p> <p>3 Q. Okay.</p> <p>4 A. And had been a defendant in a defamation</p> <p>5 of character suit.</p> <p>6 Q. And you were a cross-claimant in that,</p> <p>7 weren't you?</p> <p>8 A. Yeah.</p> <p>9 Q. Did you serve as your own lawyer?</p> <p>10 A. Yes.</p> <p>11 Q. And your own expert witness?</p> <p>12 A. Yes.</p> <p>13 Q. Were you ever involved in a lawsuit</p> <p>14 against Allstate, involving your ex-wife,</p> <p>15 concerning an auto accident?</p> <p>16 A. I don't know whether I was involved -- I</p> <p>17 don't know whether suit was filed against</p> <p>18 Allstate.</p> <p>19 Q. Wasn't there a bad faith suit filed?</p> <p>20 A. Against Allstate and my ex-wife?</p> <p>21 Q. Yeah.</p> <p>22 A. I don't recall.</p> <p>23 Q. Okay. So then you wouldn't recall whether</p>

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1 you acted as an expert witness in that 2 either?	1 Q. Okay. Going back to a question I asked 2 you earlier on the current list. Can you 3 point out to me on Exhibit 9 any cases 4 that involve life insurance claims, other 5 than the one that Mr. Miles and Mr. Bill 6 Wood were involved in?
3 A. That one was settled with Allstate.	7 A. Number 57, I know, is a life insurance 8 claim.
4 Q. It was settled?	9 Q. Okay. That's Victoria Johnson versus 10 Northwestern Mutual Life?
5 A. Yeah.	11 A. Right.
6 Q. Before or after the suit was filed?	12 Q. Is that case over?
7 A. I don't even -- I don't recall whether the 8 lawsuit was filed. Do you have the style 9 on it?	13 A. I don't know whether it's on appeal or 14 not.
10 Q. I do somewhere. Just a moment and I'll 11 see if I can help you with it. John and 12 Carol Allen versus S. Freeman Green and 13 Allstate Insurance Company. Civil action 14 number CV-1986-1088. Circuit Court of 15 Jefferson County, Alabama.	15 Q. Okay. Gusty Yearout was one of the 16 plaintiff's attorneys?
16 A. What year?	17 A. Right.
17 Q. 1986.	18 Q. And Chris King was one of the defense 19 attorneys?
18 A. Okay. That was when I was still with 19 Aetna. Yeah. I didn't recall -- I recall 20 the claim against Allstate. That was 21 where she was rear-ended.	20 A. Right.
22 Q. You were a plaintiff in that case, weren't 23 you?	21 Q. Has it been tried?
	22 A. No.
	23 Q. Well, I don't want you to tell me
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1 A. Yeah, I guess. I didn't recall that.	1 something that would jeopardize either 2 side of the lawyers of this case --
2 Q. You don't recall suing them for bad faith?	3 A. Right.
3 A. Not from that one. No.	4 Q. -- on information. But what can you tell 5 me -- You say it might be on appeal; you 6 don't know?
4 Q. Okay.	7 A. I don't know exactly what the status of 8 the case is. They had some motions, but I 9 don't know if --
5 A. It may have been worded in there. 6 (Defendant's Exhibit 8 marked 7 for purposes of identification)	10 Q. Summary judgment motions?
8 Q. Mr. Allen, let me show you what is marked 9 as Defendant's Exhibit 8, which appears to 10 be a report from you in this case dated 11 October 22nd, 2006. See if that is an 12 accurate copy of that, please, sir.	11 A. Yeah. But I don't know what's happened, 12 as far as whether there's been any appeal 13 on the motions or what that is there. 14 So --
13 A. I think they had another list of the court 14 trials. It's not a current list.	15 Q. Okay. What type of issue was involved in 16 that case or is involved in that case?
15 Q. Do you have a current list?	17 A. I think that involved -- Well, I know it 18 had issues on the payment of premium and a 19 potential lapse of premium payment.
16 A. Here's a current list.	20 Q. Did the company, Northwestern Mutual, 21 contend that the policy was out of benefit 22 due to nonpayment of premium?
17 Q. Let's mark this as the next number 18 exhibit, which will be the current list. 19 (Defendant's Exhibit 9 marked 20 for purposes of identification)	23 A. Well, it had some other issues as far as
21 Q. And the current list would be Defendant's 22 Exhibit 9; is that right, sir?	
23 A. Yes.	

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1 some accounts that were involved in 2 funding the payment of the premium. So 3 there was a dispute on that issue as far 4 as what was available to fund it, and then 5 the value of the policy at the time of the 6 alleged lapse, and then whether there were 7 any -- you know, what benefits might have 8 been due.	1 death. 2 Q. Okay. Any others? Was the issue in that 3 Cottingham versus CNA case whether or not 4 the death was, in fact, accidental? 5 A. There's more to it than that. This was 6 where the guy had sustained -- I believe 7 this is the one where he had sustained a 8 burn. He was a diabetic. And he got 9 burned by the heater. And then he ended 10 up with having his leg amputated, and then 11 he ended up dying. So it was kind of a 12 chain of causal events associated with it.
9 Q. Was this a universal life policy, or 10 interest-sensitive policy, or something 11 like that? 12 A. I think part of it had interest and part 13 of it didn't. I think there were a couple 14 different types of policy.	13 Q. And the insurance company contended that 14 he died of disease as opposed to an 15 accident? Is that fair to say? 16 A. No, I don't think so.
15 Q. Was the issue involving whether or not the 16 cash value, or the fund in the policy, was 17 sufficient to carry the premium payment? 18 A. There was some issues of cash value. Yes. 19 Q. It was not a death claim, right? 20 A. Yeah.	17 Q. Okay. Do you remember what the issue was, 18 then? 19 A. It was over him dying, and whether there 20 was a causal relationship between the 21 injury and the death. That's all I 22 remember there.
21 Q. Oh, it was a death claim? 22 A. Yeah. 23 Q. Okay. And did the insurance company take	23 Q. Any others?
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1 the position that the policy had lapsed 2 because the fund in the policy was not 3 sufficient to carry the premium? 4 A. That was part of it. Yes. 5 Q. Do you remember anything else? 6 A. I remember there was -- also you had a 7 question on the effective date of the 8 policy, and whether this was a renewal, or 9 whether it was a continuation, or whether 10 it was a new policy. And there were those 11 issues involved, too. 12 Q. Okay. Is that about all you can remember 13 about the issues involved in the case? 14 A. Yeah. I mean, that's the -- I mean, 15 whether the policy had cash value in it, 16 some portions, you know, would have 17 allowed for cash value. Some policies 18 didn't have cash value. So it was a 19 combination of those. 20 Q. I see. Okay. Any others? 21 A. 53, I think, had some elements. It was -- 22 I'm thinking that may be on accidental 23 death, involving benefits on accidental	1 A. That's all I recall. 2 Q. Thank you, sir. 3 In your role as an expert witness 4 hired by the party to civil litigation, do 5 you attempt to give fair treatment to all 6 of the language in a policy or a document, 7 or do you consider your role to be that of 8 an advocate for the party who has hired 9 you? 10 A. I don't consider myself an advocate. 11 Q. Do you try to give fair treatment to all 12 of the documents? 13 A. Absolutely. 14 (Defendant's Exhibit 10 marked 15 for purposes of identification) 16 Q. Okay. Let me show you what is marked as 17 Defendant's Exhibit 10, which appears to 18 be a letter dated January the 2nd, I 19 think, 2004. 20 A. Yes. 21 Q. All right. Now, if you would, your pages 22 of your report do not appear to be 23 numbered.

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<p>1 A. They are. Top right.</p> <p>2 Q. Yes, they are. I'm sorry.</p> <p>3 A. Top left, I mean.</p> <p>4 Q. They sure are. Let me find where I'm talking about. Okay. The second page of your report, if you will turn to that, please, sir.</p> <p>5 A. All right.</p> <p>6 Q. And in the second paragraph on the second page you refer to this particular letter, do you not?</p> <p>7 A. Yes.</p> <p>8 Q. And your letter says, and I quote, "The letter stated that if premium was received by January 17, 2004, that the policy would be reinstated."</p> <p>9 A. Uh-huh (positive response).</p> <p>10 Q. Okay. You did not mention the rest of that sentence, did you, from the letter?</p> <p>11 A. Which part are you talking about?</p> <p>12 Q. The part that says "provided the insured is still in good health."</p> <p>13 A. Correct.</p>	<p>1 and "B" under the policy.</p> <p>2 Q. Yes, sir.</p> <p>3 A. So, you know, I reference what the certificate said, as far as, you know, whether they require any evidence of insurability, and the overdue premiums were paid.</p> <p>4 Q. Okay. Have you read this policy?</p> <p>5 A. Yes.</p> <p>6 Q. The entire policy?</p> <p>7 A. Well, whatever I had. I don't recall whether we have a certified copy of that policy or not. Whatever I had policy-wise is in the notebook here.</p> <p>8 Q. Right. If you will turn, please, sir, to page 6 of your report.</p> <p>9 A. Okay.</p> <p>10 Q. The very top sentence up there where it says, "It has been my experience that the date anything is mailed is considered as the date the item was transferred to the addressee."</p> <p>11 A. Yes.</p>
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<p>1 Q. Why not?</p> <p>2 A. Well, you know, that's just the way I worded it.</p> <p>3 Q. I know it. But why didn't you give the rest of what the letter said with regard to that same sentence that you are paraphrasing?</p> <p>4 A. That's just the way I worded the sentence.</p> <p>5 Q. Is that not material to you, the condition provided in there, quote, "provided the insured is still in good health"?</p> <p>6 A. At the time the payment was mailed, he was in good health.</p> <p>7 Q. That's not what I asked. Is that not material to you at all, that it says, quote, "provided the insured is still in good health"?</p> <p>8 A. I wasn't addressing the issue of his health. I was addressing the issue if it was received by the 17th, it would be reinstated.</p> <p>9 Q. Even if he was dead?</p> <p>10 A. And, you know, I went on to mention "A"</p>	<p>1 Q. Where does that experience come from with regard to life insurance premium payers?</p> <p>2 A. That's not necessarily involving life insurance, but just, in general, of when payment is considered as being, you know, sent, received. I mean, I remember that going back to college. You know, once you put it in the mail at that point in time, that's when you've sent it on to the other person. So --</p> <p>3 Q. And that's when it's deemed received in every instance, in your judgment?</p> <p>4 A. MR. SANSPREE: Object to form.</p> <p>5 I mean, as far as the taxes go, I mean, that's the example I gave. If you got it in there before midnight on the 15th, it's deemed as having been transferred over to the Feds. So, I mean, that's the best example.</p> <p>6 Q. I'm painfully familiar with taxes. But, nevertheless, is it your understanding that always an item is deemed received when it is placed in the mail to the</p>

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<p>1 addressee?</p> <p>2 A. I haven't read anything to the contrary to 3 that position, that once you put it in the 4 mail, it's deemed on the received side.</p> <p>5 Q. You would agree that parties can contract 6 otherwise, wouldn't you?</p> <p>7 A. What do you mean "contract"?</p> <p>8 Q. Contract differently as to when something 9 is deemed received or payment made.</p> <p>10 A. Are you talking about a written contract, 11 or an oral contract, or just --</p> <p>12 Q. Either.</p> <p>13 A. You know, you can have variations, I 14 guess.</p> <p>15 Q. And if the rule is, as you stated, that an 16 item is deemed received by the addressee 17 once it's placed in the United States 18 mail, you would agree with me that parties 19 can contract otherwise, wouldn't you, 20 based on your knowledge? I'm not asking 21 you for a legal interpretation.</p> <p>22 (Brief interruption)</p> <p>23 A. Would you repeat the question again?</p>	<p>1 of premiums, and where they were to be 2 made, and such as that?</p> <p>3 MR. SANSFREE: Without looking at 4 it?</p> <p>5 MR. BUTLER: Yeah. Without 6 looking at it.</p> <p>7 A. I would have to look at it.</p> <p>8 Q. Thank you. I'll give you that 9 opportunity.</p> <p>10 MR. BUTLER: Would you mark that 11 as the next number?</p> <p>12 (Defendant's Exhibit 11 marked 13 for purposes of identification)</p> <p>14 Q. Defendant's Exhibit 11, right up under the 15 top bold print "Premiums and 16 Reinstatement," it has "Payment". And 17 doesn't it say, "Each premium is payable 18 in advance at our administrative office"?</p> <p>19 A. Yes.</p> <p>20 Q. And that's in Oklahoma City, Oklahoma, 21 isn't it, wherever the administration 22 office is?</p> <p>23 A. Wherever that is. Right.</p>
<p>1 Q. You told me that your understanding as to 2 -- regardless of what document or anything 3 that's placed in the mail is generally 4 deemed received by the addressee once it 5 is placed in the United States mail.</p> <p>6 A. Correct.</p> <p>7 Q. My next question was, wouldn't you agree 8 that parties could contract otherwise?</p> <p>9 A. I mean, you know, you can contract for a 10 lot of different things. So the 11 possibility is there.</p> <p>12 Q. Yes, sir. Have you read this policy with 13 regard to its definitions as to when 14 premiums are payable and how?</p> <p>15 A. I remember there was, like, thirty-one 16 days per premium payment due on the other 17 side. Which one are you specifically 18 referring to?</p> <p>19 Q. I'm going to refer you just a moment. But 20 as we sit here, do you remember, from your 21 review and investigation of the subject 22 Globe Life policy insuring the life of 23 David Lurie, what it said as to payments</p>	<p>1 Q. Okay. Now, did you read Ms. Lurie's 2 deposition?</p> <p>3 A. Yes.</p> <p>4 Q. Did you read the deposition or a summary 5 provided to you?</p> <p>6 A. I didn't get a summary. I read her 7 deposition.</p> <p>8 Q. Okay. And what was her testimony as to 9 when she made a payment on this policy 10 that had lapsed?</p> <p>11 A. She indicated that she had written a check 12 on January 4th and -- of 2004. Although, 13 the check stated January 4th, 2003. So we 14 had the year change.</p> <p>15 Q. There would be no issue about that.</p> <p>16 A. Okay. And then she said she had placed 17 that in the mail the evening of the 4th, 18 and that the mail was picked up the 19 morning of the 5th.</p> <p>20 Q. Of 2004?</p> <p>21 A. Of 2004. Yes.</p> <p>22 Q. January the 5th of 2004?</p> <p>23 A. Correct.</p>

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<p style="text-align: right;">Page 97</p> <p>1 Q. And for purposes of your report, had you 2 deemed that it was received by Globe Life 3 when it was placed in the United States 4 mail; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Defendant's Exhibit 11, however, 7 under "Premiums and Reinstatement," states 8 that "Premium is payable in advance at our 9 administrative office," doesn't it?</p> <p>10 A. Yes.</p> <p>11 Q. Clearly it would not have been received by 12 the date of death of David Lurie, would 13 it?</p> <p>14 MR. SANSPREE: Object to the 15 form.</p> <p>16 A. I don't know. You know, if it was mailed 17 on the 5th -- You don't know about the 18 mail, as to whether it was there the next 19 day. I don't know what day. And there's 20 nothing I've seen in the evidence that 21 says what day it was received by Globe. 22 So I don't know.</p> <p>23 Q. Have you read the depositions of the Globe</p>	<p style="text-align: right;">Page 99</p> <p>1 the date of death of the insured, David 2 Lurie?</p> <p>3 A. Well, I don't know.</p> <p>4 Q. Okay. Nevertheless, the policy requires 5 it be "paid in advance at our 6 administrative office," doesn't it?</p> <p>7 MR. SANSPREE: Object to the 8 form.</p> <p>9 A. That's what it says.</p> <p>10 Q. And if it wasn't received at the Globe 11 administrative office, then the 12 reinstatement offered in Defendant's 13 Exhibit 10 says that they must receive 14 their payment by January 17th, doesn't it?</p> <p>15 A. Yes.</p> <p>16 Q. And it says that the insured must be still 17 in good health, doesn't it?</p> <p>18 A. Yeah.</p> <p>19 Q. In fact, he was dead, wasn't he?</p> <p>20 A. Not on the 2nd.</p> <p>21 Q. Not on the 2nd, but he was dead --</p> <p>22 A. The morning of the 6th.</p> <p>23 Q. -- the morning of the 6th.</p>
<p style="text-align: right;">Page 98</p> <p>1 people that were deposed?</p> <p>2 A. Yes.</p> <p>3 Q. Well, let me save some time.</p> <p>4 A. All right.</p> <p>5 Q. Assuming for the purposes of my question 6 that there's testimony that it was 7 received on or about January the 16th of 8 2004.</p> <p>9 A. I know that's the date that it was posted. 10 Now, as to whether it was received what 11 day, that's unknown. The day it was 12 posted to the account would have been the 13 16th. So you don't know -- I mean, that's 14 a date of posting, which was a day prior 15 to the date of the 17th, which was what 16 was indicated that it had to, you know, be 17 posted by that date.</p> <p>18 Q. Yes, sir. But did you get any information 19 from those depositions as to when would 20 have been the earliest that it would have 21 been received?</p> <p>22 A. I don't recall that.</p> <p>23 Q. Would you agree it would have been after</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Right.</p> <p>2 Q. And the premium was only picked up by the 3 postman on January the 5th, right?</p> <p>4 A. Yes.</p> <p>5 Q. If Globe did not receive it until after 6 the 6th, then this reinstatement could not 7 have been, according to this letter, 8 effected, could it?</p> <p>9 A. Well, that's if you're negating that it's 10 in the mail and it's in their possession. 11 And as far as the physical possession for 12 the dateline set there, it was in their 13 physical possession and posted before the 14 17th.</p> <p>15 Q. Yes, sir. But he was not in good health, 16 you know, in between the time they 17 received the payment and the 17th, was 18 he --</p> <p>19 MR. SANSPREE: Object to the 20 form.</p> <p>21 Q. -- if they received it after the 6th?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. You wouldn't expect a life</p>

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<p style="text-align: center;">Page 101</p> <p>1 insurance company to knowingly reinstate a 2 life insurance policy that had been lapsed 3 and out of benefit, if they knew that the 4 insured was dead, would you?</p> <p>5 A. Well, you know, the statement by Attorney 6 Mitchell is contrary to that, in that 7 Attorney Mitchell indicates that he 8 advised them as of the 12th of January 9 that Mr. Lurie was dead, and they said, 10 okay, just send the premium on in. 11 There's no problem as long as it's 12 received before the 17th. So the 13 affidavit of the attorney is reflective 14 that they were with the knowledge of the 15 death as of the 12th, and then the account 16 was posted on the 16th.</p> <p>17 Q. My question is, from what you know about 18 life insurance, would you expect a life 19 insurance company to reinstate a life 20 insurance policy that was out of benefit 21 with knowledge that the insured was 22 already dead?</p> <p>23 A. I think it's circumstantial as to the</p>	<p style="text-align: center;">Page 103</p> <p>1 So -- 2 Q. Can you answer my question? 3 A. No. 4 Q. Thank you. 5 Since you referred to the attorney -- 6 His name is Mitchell? 7 MR. SANSPREE: His name is 8 Matthews. 9 MR. BUTLER: I didn't think it 10 was Mitchell.</p> <p>11 Q. Have you talked to Mr. Matthews? 12 A. No. 13 Q. Do you know to whom he talked at Globe 14 Life? 15 A. No. 16 Q. Based on your experience in the insurance 17 business or industry, would you think it 18 reasonable to assume that an employee, an 19 unidentified at this point-in-time 20 employee at Globe, would say, go ahead, 21 and, you know, if we get the premium, it 22 doesn't matter whether the insured is dead 23 or not? Does that make sense to you?</p>
<p style="text-align: center;">Page 102</p> <p>1 facts concerning the notice to the 2 insurance company.</p> <p>3 Q. How is that?</p> <p>4 A. Well, the attorney had advised them of 5 that.</p> <p>6 Q. That wasn't my question at all. Listen 7 very carefully. I'm going to ask it the 8 third time.</p> <p>9 Based on your knowledge of life 10 insurance practices, would you expect a 11 life insurance company to knowingly agree 12 to reinstate a life insurance policy that 13 was out of benefit, knowing that the 14 insured was already dead?</p> <p>15 A. I don't think you can -- you know, that's 16 second-guessing what an insurance company 17 would do. They might --</p> <p>18 Q. Well, that's what you're doing in this 19 case.</p> <p>20 A. Well, no. Huh-uh (negative response).</p> <p>21 I'm taking it on the facts of what was 22 shown as testimony by the insured's 23 attorney and the notice to the company.</p>	<p style="text-align: center;">Page 104</p> <p>1 A. I don't think you can ever truly say what 2 any employee may say about --</p> <p>3 Q. I didn't ask you what they might have 4 said. I said, does it make sense to you, 5 as a person that's been in the insurance 6 business for a lot of years?</p> <p>7 A. Makes sense that they would knowingly say 8 that? They had the information in front 9 of them, as far as the computer 10 information, on whether the account is 11 current, whether it's not current. They 12 have the information in front of them in 13 this situation. So, I mean, as far as 14 saying what the employee did or didn't do, 15 there's nothing tendered by Globe to show 16 that the event didn't happen.</p> <p>17 Q. Is it logical that such a Globe employee 18 would have said that?</p> <p>19 A. It's possible.</p> <p>20 Q. Is it logical?</p> <p>21 A. I don't know whether you could draw a fine 22 line of logic to the possibility that it, 23 you know, took effect. I mean, logically</p>

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<p style="text-align: right;">Page 105</p> <p>1 -- You may say, well, logically this 2 shouldn't happen, but "logically" doesn't 3 necessarily mean it doesn't happen. 4 Q. That's right. You use logic every day, 5 don't you? 6 A. I think most everybody does. 7 Q. I do, too. Is it logical that such an 8 employee would have said that, knowing 9 that the person was already dead and 10 saying, "We'll reinstate anyway if we get 11 the premium in time"? 12 A. I don't know what the employee knew about 13 the premium payment. 14 Q. I don't either. 15 A. And there's nothing been tendered by 16 anybody there that says that they did or 17 didn't talk with the attorney. 18 Q. All right, sir. Would you agree that 19 people who have actually worked in life 20 insurance claims for several years would 21 have more expertise than you with regard 22 to appropriate procedures, with regard to 23 life insurance claims?</p>	<p style="text-align: right;">Page 107</p> <p>1 it. And then she gave it to the adjuster 2 to see if it was covered after the claim 3 manager had approved the thing, which is 4 totally contrary to what I've seen as an 5 industry standard. 6 Q. You're not listening to my question. 7 Did you not find in the Globe 8 depositions of the Globe employees, the 9 three Globe employees that were deposed, 10 that the Globe procedure was to get a 11 printout of the actual policy involved in 12 the claim? 13 A. Wasn't the actual policy. I think it 14 would have been a specimen. 15 Q. All right. A specimen of the policy 16 involved in the claim? 17 A. But you don't know that the specimen is a 18 certified copy of the policy that existed. 19 Q. And you're not being an advocate here 20 today; is that right? 21 A. I'm just telling you the way -- 22 Q. I understand. Keep on. 23 A. -- the way it was.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. Well, since Globe doesn't have any 2 policies or procedures, I would say no. 3 Q. Okay. Would you agree that they would 4 have more knowledge of industry standards 5 with regard to life insurance claims? 6 A. No. Not the Globe folks. I mean, if you 7 haven't got any policies and procedures, 8 and everything is word-of-mouth, then that 9 would be impossible, in my opinion, for 10 these folks to have greater knowledge than 11 me when they haven't even read, you know, 12 any policies or procedures. 13 Q. Okay. You did learn from review of the 14 Globe depositions that the claims 15 examiners actually reviewed the policy 16 involved, and the benefits and exclusions 17 in those policies, in adjusting the claim? 18 A. After the fact. 19 Q. After the death? 20 A. No. Because as far as what Ms. Whitaker 21 indicated, she indicated that she got the 22 claim. She looked at it. She approved 23 it. She sent it to Legal. They approved</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. All right, sir. So did you read in the 2 depositions that the Globe adjusters would 3 have the policy language in front of them 4 as to benefits and exclusions? 5 A. They would have a specimen, which I don't 6 know whether it was the actual policy 7 verbiage and addition dates that would 8 have been involved. But there would have 9 been some form of a specimen policy with 10 them. 11 Q. Do you have any knowledge or information 12 that it was not? 13 A. No. 14 Q. So with regard to your thought that it 15 might not have been exact is basically 16 totally guess and surmise, isn't it? 17 A. Well, I don't know, because I haven't seen 18 a certified copy of the policy, and them 19 saying that, "Yes, I reviewed the 20 declaration sheets, and then I've reviewed 21 a certified copy of the policy as 22 certified by ONRA" (phonetic). 23 Q. If it's not totally guess and surmise,</p>

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<p style="text-align: right;">Page 109</p> <p>1 what is it based on, your comment that it 2 might not have been the same benefit and 3 exclusion language that Mr. Lurie had in 4 his policy?</p> <p>5 A. The experience of seeing different 6 policies submitted as being the policy in 7 force when they weren't.</p> <p>8 Q. Okay. But you yourself, in analyzing the 9 actions of Globe Life after the fact, did 10 not read and rely on all of the provisions 11 of Mr. Lurie's policy that was represented 12 to you by Ms. Lurie's counsel as being a 13 copy of his policy, did you?</p> <p>14 A. I made my observation based on what was 15 submitted to me.</p> <p>16 Q. Yes, sir. And you did not take note of 17 the language with regard to payment of 18 premiums under "Premiums and 19 Reinstatement" contained on Exhibit 11, 20 did you?</p> <p>21 A. What do you mean? As far as addressing 22 that in my report, or what?</p> <p>23 Q. Yes, sir.</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Deviation from industry standards?</p> <p>2 Q. No, sir. The industry standards 3 themselves.</p> <p>4 A. Well, I mean, you've got a combination of 5 all the different industry treatises which 6 address claims of various forms. So as 7 far as one particular book that I can say 8 encompasses it all, I don't think there's 9 one book in itself that encompasses it. 10 It's a variety of industry treatises that 11 govern how claims are handled.</p> <p>12 Q. Well, I'm speaking of life insurance 13 claims here in this case. Because you do 14 understand that's what is involved in this 15 case?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Can you tell me where those 18 industry standards that you claim are 19 breached are set forth in any manual, 20 treatise or guideline?</p> <p>21 A. I mean, we'd have to take that one-by-one 22 on what's in the letter, and then I'd have 23 to go back and look through the various</p>
<p style="text-align: right;">Page 110</p> <p>1 A. On which part, are you saying?</p> <p>2 Q. The thing we just got through a moment -- 3 under "Payment."</p> <p>4 A. You know, I mean, it says what it says, 5 and "at the administrative office." I 6 mean, I guess it was addressed to the 7 administrative office. I don't know what 8 the address was on the envelope, but I 9 assume it was to the administrative 10 office.</p> <p>11 Q. Okay. But this says "Premium is payable 12 in advance at our administrative office." 13 And you interpret that to mean if it was 14 placed in the mail and mailed to the 15 administrative office, it's the date of 16 mailing? Is that your interpretation?</p> <p>17 A. I think it's subject to ambiguity.</p> <p>18 Q. Okay. You refer often in your report to 19 industry standards, and breach of industry 20 standards, with regard to the adjustment 21 of life insurance claims. Where are those 22 industry standards published in a manual 23 or a guideline?</p>	<p style="text-align: right;">Page 112</p> <p>1 books and see what's there. I'm going on 2 my training, education and experience as 3 far as what is within an industry standard 4 and what's outside of an industry 5 standard. Industry standards say you're 6 supposed to have some sort of procedures 7 and manual, and Globe doesn't have any. 8 So how do they know what they're supposed 9 to do, other than word-of-mouth?</p> <p>10 Q. Well --</p> <p>11 A. I mean, they don't have any standards 12 within the company itself.</p> <p>13 Q. Yes, sir. Yes, sir. But you relied on 14 your training and experience, didn't you?</p> <p>15 A. And review of -- You know, my years of 16 experience and looking at things from a 17 consultant and an expert witness, same 18 point.</p> <p>19 Q. Yes, sir. But the Globe people, that you 20 read the depositions of, relied and 21 utilized their training and experience in 22 the very field of life claims-handling, 23 didn't they?</p>

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<p style="text-align: right;">Page 113</p> <p>1 A. Their training and experience is strictly 2 a one-on-one, word-of-mouth with no 3 procedures in mind, or no set procedures 4 for the company.</p> <p>5 Q. And yours is superior because your 6 training and experience is working on 7 plaintiffs' cases as a professional 8 witness to give testimony in civil 9 lawsuits; is that right?</p> <p>10 MR. SANSPREE: Object to the 11 form.</p> <p>12 A: I do plaintiff and defense work. So 13 it's --</p> <p>14 Q. I'm sorry. Plaintiff and defense work. 15 Your training and experience would be 16 superior, in your judgment, to their 17 training and experience with regard to 18 life claims-adjusting; is that right?</p> <p>19 A. I would say with these folks, from what I 20 read, with them not having any training, 21 or education, or any certification, and 22 then having nothing to go on within the 23 company.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. And you're going to research that and 2 report that back to Mr. Sanspree if you 3 can find it?</p> <p>4 A. Only if I see anything on it.</p> <p>5 Q. I would appreciate it.</p> <p>6 But you say it would be a breach of 7 industry standard for the Globe Life 8 claims personnel to use their training and 9 experience wherein they adjust claims 10 every day on these same type life 11 insurance policies and they actually 12 utilize the contract of insurance itself 13 to go by with regard to benefits and 14 exclusions?</p> <p>15 A. Well, I mean, this one, they accepted the 16 -- I mean, initially Globe says, "Yeah, 17 it's paid. It's payable." And then the 18 law firm looked at it and they say it's 19 payable. And then you come back to the 20 examiner and they say, "Oh, no, we're not 21 going to pay the thing." I mean, that's 22 just a total backwards approach from what 23 industry standards are. And so --</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Well, they have the policy, don't they, 2 that sets forth the contract?</p> <p>3 A. Yeah. But they don't have any policies 4 and procedures manual. I know you've seen 5 them, and they go down and explain how 6 you're supposed to do things when you get 7 a coverage issue, how it's supposed to be 8 addressed, how it's supposed to be 9 handled. But here they say they've got 10 nothing but word-of-mouth to guide any of 11 these folks. And then you've got a person 12 that says they've been there thirty years 13 and they don't know what a reservation of 14 rights is. I know my experience is better 15 than theirs if they don't even have a 16 concept of that.</p> <p>17 Q. I might agree with you if you can point to 18 me any place that any company on life 19 insurance claims utilizes the terminology, 20 quote, "reservation of rights," end quote, 21 or "nonwaiver." But you don't have any 22 such information, do you?</p> <p>23 A. Not today.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. You say that what they should have done 2 initially, the first claims person that 3 touched the claim -- Do you know when the 4 proof of loss came in?</p> <p>5 A. I don't recall the date on that.</p> <p>6 Q. Wasn't it sometime in March? I don't 7 either.</p> <p>8 A. It was after January.</p> <p>9 Q. I would hope it was after January. But 10 assuming it was sometime in March of 2004, 11 once you've got proof of loss of the 12 claim, is it your view that the first 13 claims person that touched that should 14 have determined whether the policy was in 15 force or not at the date of death?</p> <p>16 A. Well, Ms. Whitaker never determined 17 whether --</p> <p>18 Q. Can you answer my question?</p> <p>19 A. Ms. Whitaker never determined whether the 20 policy was in force. She never looked at 21 the policy. She didn't determine anything 22 on the premium payment, and she okayed the 23 payment.</p>

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<p style="text-align: right;">Page 117</p> <p>1 Q. Do you think that's an answer to my 2 question? 3 A. That's what happened. 4 Q. That's not an answer to my question, 5 though. I'm entitled to get answers to 6 the questions I ask, Mr. Allen. And I've 7 got all day. 8 A. All right. 9 MR. BUTLER: Read back my 10 question, please. 11 (Requested portion of Record 12 read by the Reporter) 13 A. Yes. 14 Q. Thank you. 15 And it appears in this instance that 16 was not done; is that right? 17 A. To my knowledge. Well, you know, I don't 18 know what -- I don't know exactly what was 19 done about that. 20 Q. Let me ask you this, Mr. Allen: Do you 21 know any legitimate, logical reason that 22 Globe would have gone through the time and 23 expense to investigate the merits of this</p>	<p style="text-align: right;">Page 119</p> <p>1 policy was in force was investigated, 2 right, after the merits issue had been 3 investigated, the merits of the payability 4 of the claim as an accidental death? 5 A. Yes. 6 Q. Thank you. 7 And you say that was an error in the 8 order in which they went through this, in 9 your judgment? 10 A. Yes. 11 Q. Okay. And that ties back into your view 12 that the first claims person should have 13 determined whether the policy was in 14 benefit at the date of the insured's 15 death; isn't that right? 16 A. That would be one thing you would look at. 17 Q. What else would you look at? 18 A. Well, you'd look at the cause of death, 19 and whether it might have been suicidal, 20 or whether it might have been accidental, 21 suicidal, homicide. 22 Q. If the claims adjuster determined that the 23 policy was not in benefit on the date of</p>
<p style="text-align: right;">Page 118</p> <p>1 claim, if it knew from the outset that the 2 insured had died while the policy was out 3 of benefit? 4 MR. SANSPREE: Object to the 5 form. 6 A. Repeat it one more time. 7 Q. Yes, sir. Do you know whether there is 8 any legitimate, logical, reasonable basis 9 that Globe would have gone to the time and 10 expense of going into investigation of the 11 merits of whether this claim is payable, 12 if they already knew that the insured had 13 died while this policy was out of benefit? 14 MR. SANSPREE: Same objection. 15 A. You'd still have some elements to 16 investigate on the timing, and when the 17 payments were submitted. There's a lot of 18 stuff you can look at from an 19 investigative standpoint. I mean, the way 20 the claim was sent in, it was sent in and 21 approved, and then the investigation was 22 started after the claim was approved. 23 Q. Well, the investigation as to whether the</p>	<p style="text-align: right;">Page 120</p> <p>1 death, that would be the end of it, in 2 your view, wouldn't it, or not? 3 A. Not necessarily the end of it. I mean, 4 you've still got an obligation to 5 investigate the claim, investigate all 6 avenues, and make an informed decision and 7 subject it to a cognitive review where you 8 know all the factors involved before you 9 make a decision. 10 Q. Yes, sir. And would that include 11 investigating what I call the merits? It 12 may be a poor phrase. But when I say 13 "merits," I'm talking about if there was 14 no issue of whether the policy was in 15 benefit, whether this was a payable claim 16 or not? 17 A. Well, I mean, still you've got a question 18 as to, you know, whether it was in benefit 19 or not. I mean, you've got the 20 reinstatement thing. So it's kind of 21 convoluted as to the way the thing works. 22 Q. Yes, sir. You would agree with me, would 23 you not, that this policy had clearly</p>

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<p style="text-align: right;">Page 121</p> <p>1 lapsed and was beyond the grace period on 2 January the 4th of 2004?</p> <p>3 A. Now, they had the reinstatement portion -- 4 On the grace period, it says, "A grace 5 period of thirty-one days will be allowed 6 each insured for the payment of each 7 premium after the 1st, during which period 8 his or her insurance shall continue in 9 force."</p> <p>10 Q. Okay.</p> <p>11 A. Where you're having each insured and each 12 premium. So it's stating a thirty-one-day 13 grace period on each premium, which would 14 be if you've got a November premium and 15 then you've got a December premium, it's 16 saying a thirty-one-day grace period on 17 each of the premiums.</p> <p>18 Q. Yes, sir. But the policy had lapsed as 19 of, I think, December the 28th or toward 20 the end -- I can't remember the exact date 21 -- but toward the -- The policy had lapsed 22 and was out of benefit before the 23 beginning of 2004, wasn't it?</p>	<p style="text-align: right;">Page 123</p> <p>1 could be modified and changed by an oral 2 statement?</p> <p>3 A. As a general rule, they're not supposed to 4 be. That doesn't mean that it doesn't 5 happen or you don't get those statements 6 from employees.</p> <p>7 Q. Well, let's forget about general rules and 8 things of a general nature. Let's talk 9 about the language in this policy. Did 10 you read in this policy where it can't be?</p> <p>11 A. I don't recall the exact section. That's 12 a standard condition in most policies.</p> <p>13 Q. Yes, sir. You wouldn't be surprised to 14 find it in here?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 (Brief recess)</p> <p>18 Q. Let me see if I've got this right, 19 Mr. Allen. Do I understand that it is 20 your opinion, that with regard to this 21 particular claim on Mr. Lurie's death, 22 that initially the claims person that 23 handled the review of the proof of loss</p>
<p style="text-align: right;">Page 122</p> <p>1 A. Yes, sir.</p> <p>2 Q. There's no issue about that, is there?</p> <p>3 A. No issue on the lapse. They did reinstate 4 it, though.</p> <p>5 MR. BUTLER: Move to strike as 6 nonresponsive.</p> <p>7 Q. All right, sir. So whether or not this 8 policy was in benefit on the date of death 9 turns on the issue of whether or not the 10 premium mailed on January the 5th is 11 deemed received by Globe on that date; is 12 that right?</p> <p>13 A. That's part of it.</p> <p>14 Q. Anything else?</p> <p>15 A. Well, the fact that you've got the 16 attorney that calls and advises them, as 17 he indicated on the 12th, that this had 18 happened, and then he receives word that 19 as long as it's received before the 17th.</p> <p>20 Q. Okay. In your reading, and investigation, 21 and review and analysis of the policy in 22 question in this case, did you determine 23 whether or not the insurance contract</p>	<p style="text-align: right;">Page 124</p> <p>1 should have initially determined whether 2 the contract or policy of life insurance 3 was still in force at the day of this 4 death? Is that fair?</p> <p>5 A. That would be one of the things.</p> <p>6 Q. All right. But do I also understand your 7 testimony, that, nevertheless, whatever -- 8 you know, even if the adjuster determined 9 that the contract was not in benefit at 10 the date of his death, the adjuster should 11 have gone forward to determine whether the 12 claim was otherwise payable?</p> <p>13 A. Well, I mean, you need to investigate the 14 whole thing. I mean, as far as the 15 premium payment, whether it was, you know, 16 sent and received in accordance with the 17 thing, the question on the letter -- or 18 the premium payment mailed by Ms. Lurie, I 19 mean, if it had the address of Globe Life 20 on it at the prescribed place, then that 21 would be in accordance with the policy 22 provisions on the premium payment, by 23 having it properly addressed to them when</p>

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<p style="text-align: right;">Page 125</p> <p>1 it's put in the mail. So you've got all 2 these little things you need to look at in 3 order to ascertain, you know, what 4 happened, what was due, what wasn't due, 5 if they had any problem with the coverage, 6 any problem with the payment, any problem 7 with the reinstatement. Was it in 8 accordance with normal procedures?</p> <p>9 Q. Do you think they should have gone ahead 10 and determined whether the claim -- for 11 example, this is an accidental death 12 policy -- whether the claim was payable as 13 an accidental death, but for the issues 14 with regard to premium payment?</p> <p>15 A. I think they should have investigated the 16 whole thing before you go and you approve 17 payment, and then after you approve 18 payment by management and legal, and both 19 of those approve of payment, and then you 20 give it to an adjuster and say, all right, 21 now go investigate it, and see if there's 22 any reason to pay it. But that's after 23 you receive the approval, which is just</p>	<p style="text-align: right;">Page 127</p> <p>1 on experience, too, didn't she? 2 A. The experience of not reading any manuals 3 or knowing what policy --</p> <p>4 Q. Is that what she said? 5 A. No, she didn't say that. She says they 6 have no manuals, and everything is done 7 one-on-one.</p> <p>8 Q. Yes, sir. 9 A. And that's not the way you find the 10 business is done within the insurance 11 companies.</p> <p>12 Q. And she said they train their adjusters 13 based on experience, and based on the 14 policies and benefits and exclusions, 15 don't they?</p> <p>16 A. That's one-on-one person.</p> <p>17 Q. Yes, sir. Okay. But, nevertheless, you 18 agree that they should have investigated 19 the -- regardless of the premium payment, 20 and whether the policy was in force or 21 not, they should have investigated the 22 entire claim?</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 126</p> <p>1 totally contrary to the way I've seen 2 business done, which is where the adjuster 3 determines all the facts, submits that to 4 management, determines if there's any 5 question there, and then the management, 6 if they've got any further question, then 7 they may seek a legal opinion after that. 8 Here they passed it through both 9 management and legal, and then came back 10 and relied on the adjuster to come up with 11 a basis for denial.</p> <p>12 Q. But with regard to the procedures, you 13 think that they handled it somewhat 14 backwards based on procedures they should 15 have followed?</p> <p>16 A. Well, they don't have any procedures.</p> <p>17 Q. Well --</p> <p>18 A. I mean, they say --</p> <p>19 Q. They didn't say they --</p> <p>20 A. She said they didn't have a policies and 21 procedures manual, and it was 22 word-of-mouth. But that again is --</p> <p>23 Q. That's right. She said it was also based</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Okay. And the only difference is, they 2 didn't make the determinations in the 3 order that you say they should have; isn't 4 that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Because they did do a -- Would you 7 agree with me that they did a thorough 8 investigation as to what we've been 9 calling the merits of the claim, as to 10 whether it was payable, but for the issues 11 concerning whether the policy was in 12 force? Did you look at that?</p> <p>13 A. Repeat the question again.</p> <p>14 Q. In other words -- Let's forget about the 15 issue, for right now, for the purpose of 16 my question, about whether the policy was 17 in force or not. I understand your 18 opinion on that.</p> <p>19 A. Okay.</p> <p>20 Q. Did you read what was done by the claims 21 personnel to investigate the merits of the 22 claim, in other words, whether he died of 23 accidental death, and things of that</p>

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<p>1 nature, and that sort of thing? Did you 2 read that?</p> <p>3 A. Yeah. They did make a determination based 4 on the -- I think they ordered the 5 coroner's report or police report.</p> <p>6 Q. Yes, sir. And did you find that that part 7 of the investigation appeared to have been 8 done reasonably?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And the determination on that 11 portion was that it was a payable claim, 12 wasn't it?</p> <p>13 A. Correct.</p> <p>14 Q. And that was the opinion of Ms. Whitaker, 15 who's in charge of the Claims Department, 16 and it was the opinion of Brian Mitchell 17 in the Legal Department, wasn't it?</p> <p>18 A. Okay. Yeah. Because we've got Matthews 19 and Mitchell.</p> <p>20 Q. Right. So if there was any negligence 21 involved here, it was in regard to the 22 first person in the Claims Department at 23 Globe that first looked at the claim,</p>	<p>1 regard to premiums; is that right?</p> <p>2 A. Well, it should have been an 3 all-encompassing investigation. And as to 4 whether they have theirs segmented out for 5 each person doing a given task, and then 6 somebody pulls everything together, you 7 know, I don't know specifically as to how 8 they handled that.</p> <p>9 Q. But it's your opinion that that should 10 have been the first order of business?</p> <p>11 A. Yeah. That's one of the first things you 12 look at, is your coverage.</p> <p>13 Q. So, then, if there is negligence involved 14 here in the processing of the Lurie claim, 15 it was with regard to that person not 16 doing that initially in this case; is that 17 right?</p> <p>18 A. Well, it moves on down the line. Because 19 one person is not doing it and then other 20 folks don't ask any questions about that, 21 and then they accept some basic things. 22 So it's moving on down where, you know, 23 several people are not doing a good</p>
<p>1 because she apparently did not determine 2 whether the policy was in force or not at 3 the date of death; is that right?</p> <p>4 A. That would have been the claim manager and 5 the Legal Department. Because she made 6 the -- Ms. Whitaker made the decision.</p> <p>7 Q. I don't think you're following my 8 question. I may not have stated it very 9 clearly. But I'm talking about the first 10 person that --</p> <p>11 A. Whoever took the phone call in?</p> <p>12 Q. No. I'm talking about when they received 13 the proof of loss.</p> <p>14 A. Okay.</p> <p>15 Q. Do you know who that person was that first 16 handled the claim upon receipt of the 17 proof of loss?</p> <p>18 A. I don't recall the name.</p> <p>19 Q. Okay. Fair enough.</p> <p>20 Whoever that person was, in your 21 judgment, should have made the 22 investigation as to whether the policy was 23 in force, and investigated the issues with</p>	<p>1 overview.</p> <p>2 Q. Okay. But that information should have 3 been determined initially, shouldn't it 4 have, about whether the policy was in 5 force or not on the premium issues?</p> <p>6 A. That should have been done before any 7 decision was made.</p> <p>8 Q. What possible benefit, in your judgment, 9 would there have been to Globe to spend 10 the time and expense to investigate the 11 merits if the policy was not in benefit at 12 the date of death?</p> <p>13 A. They wouldn't be in this lawsuit today if 14 they had investigated the thing properly.</p> <p>15 Q. You're not listening to my question. 16 Please take your time and listen to it. 17 We'll both get out of here a lot quicker. 18 My question is this: What possible 19 benefit would there have been to Globe to 20 spend the time and expense to investigate 21 the merits of the claim if Globe already 22 knew that the policy was not in benefit on 23 the date of Mr. Lurie's death?</p>

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<p>1 A. You would still need to investigate it to 2 make sure that the entire investigative 3 process for the claim was completed and 4 that you've obtained all the relevant data 5 to make the decision -- make the informed 6 decision, and then you can make a 7 cognitive review of what information you 8 have and determine whether you have the 9 information you need to make the decision.</p> <p>10 Q. Do you agree with me that the options 11 facing Globe on the Lurie claim were 12 either to refund the premium, or to pay 13 the claim?</p> <p>14 A. I think they would have denied it, too, 15 and not refunded the premium or not paid 16 the claim.</p> <p>17 Q. Well, it wouldn't be appropriate to deny 18 the claim and not to refund this premium, 19 would it?</p> <p>20 A. Well, again, you know, what should be and 21 what is are two different things. And I'm 22 not --</p> <p>23 Q. I'm not talking about "should be." Do you</p>	<p>1 payable under the policy and the governing 2 law -- and I'm not asking you to agree 3 with me on that, but to assume that that's 4 a fact -- the only damages that Ms. Lurie 5 would have, possibly, is the delay 6 occasioned by the refund of her premium, 7 wouldn't it, the loss of the use of her 8 \$33.00?</p> <p>9 A. Repeat it one more time. I mean, you're 10 asking -- you're getting multi-part 11 questions and then throwing -- 12 MR. SANSPREE: Just let him ask 13 it.</p> <p>14 THE WITNESS: All right.</p> <p>15 Q. Assuming for the purposes of my question 16 that Mr. Lurie, based on all the facts -- 17 I'm not asking you to agree. I'm asking 18 you to assume for the purposes of my 19 question, if the claim was not payable 20 according to what all took place, and the 21 provisions in the policy, and the 22 applicable law, then Ms. Lurie received 23 her refund of premium, so the only loss</p>
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<p>1 actually believe, from an objective 2 standpoint, that Globe would have held the 3 \$33.00 in premium after denying the claim?</p> <p>4 A. Shouldn't. But, I mean, you know, they 5 refunded it. But, I mean, you can't make 6 a general rule and say, okay, well, this 7 doesn't make sense. Well, there are a lot 8 of things that are done that don't make 9 sense.</p> <p>10 Q. That's right. So if Globe viewed their 11 options on this claim as either refunding 12 the premium or paying the claim, if they 13 determine that the claim should be denied 14 and should not be paid, if they view that 15 their option ultimately was refund of the 16 premium, it wouldn't be of much benefit 17 for Globe to hold that premium of \$33.00 18 for three months, would it?</p> <p>19 A. Benefit to Globe strictly on withholding 20 the premium or the premium reimbursement?</p> <p>21 Q. Yes.</p> <p>22 A. No.</p> <p>23 Q. Okay. And if, in fact, this claim was not</p>	<p>1 that she would have had would have been 2 the loss of use of that \$33.00 for the 3 three months involved in the claims 4 determination; isn't that right?</p> <p>5 A. That's if you're saying everything else is 6 right, and that it's just the premium.</p> <p>7 Q. Yes, sir.</p> <p>8 A. That would be correct on the premium 9 alone. I don't agree, as you said it, 10 with the end result.</p> <p>11 Q. Okay. I noticed in your report -- or, at 12 least, I didn't find it, any reference to 13 your expressing an opinion of bad faith. 14 Have I missed something in your report?</p> <p>15 A. I believe bad faith is a jury 16 determination, and it's not my judgment 17 call as to what constitutes bad faith. 18 Mine is an evaluation of the deviation 19 from industry standards. So I don't 20 comment on what -- I don't make the 21 judgment call on the bad faith.</p> <p>22 Q. Did you find any evidence of intentional 23 or malicious conduct on Globe's part of</p>

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<p style="text-align: right;">Page 137</p> <p>1 handling this claim as opposed to simply 2 violation of industry standards, in your 3 view, and negligence?</p> <p>4 A. They were intentionally looking for a way 5 to get rid of the claim.</p> <p>6 Q. Excuse me?</p> <p>7 A. I feel that after the claim manager 8 approved it and after Legal approved the 9 thing, then I think they intentionally 10 went looking for some other way to not pay 11 the claim.</p> <p>12 Q. If, in fact, the policy was out of benefit 13 at the date of death, wouldn't that be a 14 legitimate reason, in your judgment, to 15 deny the claim?</p> <p>16 A. Well, I mean, you would have to again --</p> <p>17 Q. Please answer my question, and then 18 explain it as long as you wish.</p> <p>19 A. Repeat it one more time.</p> <p>20 Q. See, that's our problem, is that you start 21 doing something other than answering my 22 question, and then you can't remember what 23 was asked of you.</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Go ahead. Answer it as you want.</p> <p>2 A. Okay. Well, give me the question again 3 and we'll start again.</p> <p>4 Q. Do you remember it?</p> <p>5 A. No.</p> <p>6 Q. See.</p> <p>7 MR. BUTLER: Give him the 8 question again.</p> <p>9 (Requested portion of Record 10 read by the Reporter)</p> <p>11 A. I'd say no, as a qualified, due to the 12 fact that you've got to determine what 13 factors surround the basis for denial. If 14 everything is clean, and everything was 15 done as it should be, then you may have a 16 legitimate reason. If it wasn't done in 17 accordance with what should have been 18 done, then you may not have a reason.</p> <p>19 Q. Well, see, that's what my question is, 20 because you leave provisions in your 21 answer. You said if everything was done 22 appropriately and the policy was out of 23 benefit, you may have a legitimate reason.</p>
<p style="text-align: right;">Page 138</p> <p>1 MR. BUTLER: Please read it back. 2 (Requested portion of Record 3 read by the Reporter)</p> <p>4 A. Could be.</p> <p>5 Q. Thank you.</p> <p>6 In other words, you think the claim 7 could be payable if, in fact, the policy 8 was out of benefit at the date of the 9 death?</p> <p>10 A. Well, I think this again --</p> <p>11 Q. Can you answer first and then explain?</p> <p>12 A. I'd like to explain it and then answer.</p> <p>13 Q. Then we don't remember the question. But 14 go ahead.</p> <p>15 A. Well, let's repeat the question one more 16 time since --</p> <p>17 Q. See.</p> <p>18 A. I get started and then you stop me and 19 then we lose the role.</p> <p>20 Q. It's because you're answering something 21 other than the question, John.</p> <p>22 A. I'm getting to your question. You're just 23 not --</p>	<p style="text-align: right;">Page 140</p> <p>1 Under what circumstances would you not, 2 under that scenario?</p> <p>3 A. Well, I mean, in this one you've got a lot 4 of things that didn't go right.</p> <p>5 Q. Yeah. But didn't I ask you to assume for 6 the purposes of my question --</p> <p>7 A. But to assume is to get an answer that is 8 more in line with what you want to hear 9 and not in accordance with what I see.</p> <p>10 Q. I understand that. I don't think I'm 11 going to get you to agree with me on every 12 provision, every issue in this case that 13 is my contention, Mr. Allen. But if you 14 agree that, unquestionably, this 15 particular policy was out of benefit on 16 the date of death, wouldn't that be a 17 legitimate reason to deny the claim? Yes 18 or no?</p> <p>19 A. Could be.</p> <p>20 Q. All right.</p> <p>21 A. That's what it is. Because you want a 22 specific, and there are too many other 23 things that go in there that can cause a</p>

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<p style="text-align: right;">Page 141</p> <p>1 variance.</p> <p>2 Q. Are you working for Mr. Sanspree in this</p> <p>3 case on an hourly rate?</p> <p>4 A. Yes.</p> <p>5 Q. And what is your hourly rate?</p> <p>6 A. \$175.00.</p> <p>7 Q. Okay. Approximately how many hours do you</p> <p>8 have in the case?</p> <p>9 A. Let's see. I sent one bill for 39.10</p> <p>10 hours. And I may have another 11 or 12</p> <p>11 hours that I haven't billed for on that.</p> <p>12 Q. Can we get a copy?</p> <p>13 A. You can have a copy of the whole thing.</p> <p>14 If she wants to copy this and then send it</p> <p>15 to you, you can have a copy of everything</p> <p>16 I've got in here.</p> <p>17 Q. Well, does that entire notebook include</p> <p>18 everything that you used to form your</p> <p>19 opinions in this case?</p> <p>20 A. I mean, it doesn't include the treatises.</p> <p>21 But as far as the documents, I mean, these</p> <p>22 would be the other documents, and then</p> <p>23 whatever documents I had in here.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. What's that one?</p> <p>2 A. That was on the personal insurance. It</p> <p>3 didn't have anything on the adjusting.</p> <p>4 Q. That's what I recalled.</p> <p>5 A. This has some unfair claim practices,</p> <p>6 which are across-the-board.</p> <p>7 Q. You express opinions of unfair claims</p> <p>8 practices in this case?</p> <p>9 A. And then Bibb's book.</p> <p>10 Q. On unfair claims practices, what is your</p> <p>11 basis for expressing an opinion that the</p> <p>12 handling of this claim was an unfair</p> <p>13 claims practice?</p> <p>14 A. Well, there's not an unfair claims</p> <p>15 practice recognized in the State of</p> <p>16 Alabama. But insurance companies who</p> <p>17 handle claims across the nation are</p> <p>18 required to abide by unfair claims</p> <p>19 practices in their handling of claims. So</p> <p>20 I think they would be subject to it in all</p> <p>21 the states. And even though Alabama</p> <p>22 doesn't have it, I think the folks -- from</p> <p>23 what I've seen with other companies, even</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. I call myself marking the treatise that</p> <p>2 you relied on for your opinions in the</p> <p>3 case. But didn't -- We can go back</p> <p>4 through it. But didn't we discuss all the</p> <p>5 other treatises, and that you did not rely</p> <p>6 on those for your opinions? Do you have</p> <p>7 other treatises that --</p> <p>8 A. I've got other treatises. I mean, as far</p> <p>9 as --</p> <p>10 Q. I'm only interested in those that you used</p> <p>11 for opinions in this case, Mr. Allen. I</p> <p>12 don't want to clutter the Record.</p> <p>13 A. Yeah.</p> <p>14 Q. If you did, then I want --</p> <p>15 A. I think as far as looking at that, that</p> <p>16 has some -- on coverage aspects of the</p> <p>17 things that I felt were germane. It's</p> <p>18 nothing new that I didn't know. It's just</p> <p>19 supportive to my position.</p> <p>20 Q. I understand that. And are there others</p> <p>21 other than this Exhibit 6?</p> <p>22 A. No, sir. Again, we haven't -- there</p> <p>23 wasn't anything --</p>	<p style="text-align: right;">Page 144</p> <p>1 though Alabama doesn't recognize an unfair</p> <p>2 claims practice, they abide by those in</p> <p>3 administering claims within the State of</p> <p>4 Alabama.</p> <p>5 Q. Okay. Well, what amounted to a violation</p> <p>6 -- is it -- didn't you say Unfair Claims</p> <p>7 Practice Act?</p> <p>8 A. Well, it's referred to as the --</p> <p>9 Q. I'm trying to see how you referred to it</p> <p>10 in your report.</p> <p>11 A. I don't know that I've got -- That's just</p> <p>12 -- I don't think I went into any unfair</p> <p>13 claims practices on that.</p> <p>14 Q. I think you did.</p> <p>15 A. I may have.</p> <p>16 Q. Mr. Allen's book is "Alabama Liability</p> <p>17 Insurance Handbook," isn't it?</p> <p>18 A. Right.</p> <p>19 Q. And this is not liability insurance, is</p> <p>20 it?</p> <p>21 A. He covers a wide variety of insurance</p> <p>22 claims, I think. So --</p> <p>23 Q. Can you find in your report any reference</p>

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<p style="text-align: right;">Page 145</p> <p>1 to Unfair Claims Act? It's on page 7, I 2 see, about the middle of the page. You 3 say, "Since there are no claims procedures 4 or claims manuals, this is an unfair 5 claims practice."</p> <p>6 A. Right.</p> <p>7 Q. Okay. So you're saying that there is a 8 requirement under the law that an 9 insurance company have a claims manual and 10 claims procedures printed?</p> <p>11 A. For Alabama there's not an unfair claims 12 practices law. But as far as the National 13 Association of Insurance Commissioners, 14 the NAIC, under Section C it says, 15 "Failing to adopt and implement reasonable 16 standards for the prompt investigation of 17 claims arising under insurance policies."</p> <p>18 Q. And you say those can't be done by 19 experience and word-of-mouth of the claims 20 examiners?</p> <p>21 A. I think you have to have some policies and 22 procedures that were evidenced in that 23 other case.</p>	<p style="text-align: right;">Page 147</p> <p>1 uniformly during the underwriting process, 2 doesn't it?</p> <p>3 A. That's part of it. Yes.</p> <p>4 Q. Wasn't this case about underwriting?</p> <p>5 A. It has underwriting. That's predominantly 6 underwriting.</p> <p>7 Q. Well, is it on claims?</p> <p>8 A. I think it speaks to the claim issues.</p> <p>9 Q. Where?</p> <p>10 A. As far as the fact of what you need to 11 have, in my opinion.</p> <p>12 Q. Where?</p> <p>13 A. It discusses claims from the standpoint of 14 bad faith, abnormal or just regular bad 15 faith.</p> <p>16 Q. Yes, sir. But with regard -- You point 17 out to me where in that provision it says 18 you've got to have written procedures and 19 published guidelines for the handling of 20 claims.</p> <p>21 A. It doesn't, to my recollection. It's 22 predominantly underwriting.</p> <p>23 Q. Thank you.</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. That doesn't say so, though, does it, what 2 you just read from NAIC?</p> <p>3 A. It says, "Failing to adopt and implement 4 reasonable standards for the prompt 5 investigation of claims arising under 6 insurance policies."</p> <p>7 Q. But that doesn't say it has to be a 8 written manual or written procedures, does 9 it?</p> <p>10 A. Correct. But that other case I had 11 references written procedures.</p> <p>12 Q. Which one?</p> <p>13 A. Madison.</p> <p>14 MR. SANSPREE: Maddox.</p> <p>15 Q. That said you had to have written claims 16 procedures and manuals?</p> <p>17 A. It references not having procedures, and 18 word-of-mouth stuff, leads itself to 19 problems.</p> <p>20 Q. Does it say it's illegal?</p> <p>21 A. I don't recall it saying it's illegal.</p> <p>22 Q. This is where there was no mechanism to 23 ensure that applicants were treated</p>	<p style="text-align: right;">Page 148</p> <p>1 Do you want to read and sign or --</p> <p>2 A. Please.</p> <p>3 Q. Okay.</p> <p>4 MR. SANSPREE: I've got just a 5 few questions to follow up.</p> <p>6 EXAMINATION</p> <p>7 BY MR. SANSPREE:</p> <p>8 Q. John, during your work experience with the 9 various insurance companies you've 10 testified to having worked with earlier, 11 would the process of gathering information 12 to see whether or not a claim was covered, 13 would that be the same for liability and 14 property insurance as it would be with 15 life insurance?</p> <p>16 A. Yes.</p> <p>17 Q. And would you also, when you're adjusting 18 on liability of property and insurance 19 claim, would you look at the policy 20 language to determine coverages and 21 exclusions just like you would in a life 22 insurance claim case?</p> <p>23 A. Yes.</p>

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<p style="text-align: right;">Page 149</p> <p>1 Q. And would the procedures in doing so be 2 the same for liability and property cases 3 as it would with life insurance? 4 A. Yes. 5 Q. Would the industry standards be the same, 6 as it relates to property and casualty and 7 liability insurance, as it would be with 8 life insurance? 9 A. In the handling of claims, yes. 10 Q. And do you remember giving testimony for 11 me in a life case in front of Judge Dement 12 in Alegro versus Monumental case? 13 A. I remember Alegro. 14 Q. And was that a death case involving life 15 insurance? 16 A. I believe that's correct. Yes. 17 Q. And was your opinion accepted as an expert 18 opinion in Judge Dement's courtroom? 19 A. Yes, I believe so. I didn't give a 20 deposition, but I think I gave a report on 21 that. 22 Q. John, you gave some testimony earlier 23 about the first sentence at the top of</p>	<p style="text-align: right;">Page 151</p> <p>1 2004? 2 A. Yes. 3 Q. That's all I've got. 4 A. That would have been the 4th, which would 5 have been when it was put in the mailbox, 6 and then the 5th when it was picked up. 7 REEXAMINATION 8 BY MR. BUTLER: 9 Q. So your date is the 4th? All you've got 10 to do is put it in the mailbox and that's 11 it? 12 A. It was addressed to the administrative 13 office. 14 Q. Okay. Is the Alegro case on your list? 15 A. I didn't give a deposition in that one. 16 Q. Did you give trial testimony? 17 MR. SANSPREE: No. He just gave 18 a report. 19 A. No. I think it was just a report. 20 Q. Well, explain to me how Judge Dement would 21 have had an opportunity to accept your 22 testimony as an expert based on a report, 23 as opposed to sworn testimony.</p>
<p style="text-align: right;">Page 150</p> <p>1 Defendant's 11, which states "Payment," 2 and then it goes on to read, "Each premium 3 is payable in advance at our 4 administrative office." Do you remember 5 giving that testimony earlier? 6 A. Yes. 7 Q. Assume with me that Ms. Lurie put the 8 premium payment in the mail on January 5th 9 and addressed it to the administrative 10 office. Would that premium have been paid 11 at that administrative office at that 12 time? 13 MR. BUTLER: Object to the form. 14 Calls for a legal 15 conclusion. The witness is 16 not competent to testify as 17 to that. 18 Q. In industry standards, would that premium 19 have been payable at that time? 20 MR. BUTLER: Object to the form. 21 A. Yes. 22 Q. And was Mr. Lurie, to the best of your 23 knowledge, was he alive on January 5th,</p>	<p style="text-align: right;">Page 152</p> <p>1 MR. SANSPREE: It was just filed 2 with a brief. 3 MR. BUTLER: I understand that. 4 A. I didn't make the decision. You know, I 5 did my thing. 6 Q. Is it your understanding -- Do you have 7 knowledge that Judge Dement accepted your 8 qualifications as an expert on life claims 9 when you didn't even give any testimony in 10 the case? 11 A. Well, I gave a report. I don't know 12 whether it was an affidavit or my report. 13 I don't recall. 14 Q. Well, were you examined as to your 15 qualifications as an expert in life claims 16 in the Alegro case? 17 A. I don't recall. 18 Q. How do you know whether the procedures 19 would be the same in life insurance 20 claims-adjusting and property and 21 casualty, if you have no experience in 22 life insurance claims-adjusting? 23 MR. SANSPREE: Object to the</p>

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**FREEDOM
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WITNESS CERTIFICATION

I, John H. Allen, do hereby acknowledge that I have read the foregoing transcript of my testimony and that it is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

John H. Allen
Witness
Printed name: John H. Allen

Sworn to and subscribed before me, this
the 19 day of JA N, 2006.

Jeanne A. Prentiss
Notary Public
My Commission expires: 9-27-2007

Deposition of: John Allen
Taken: 12/07/2006
Court Reporter: Jackie Parham

TRANSCRIPT ERRATA SHEET

Deposition of:

John Allen

Taken:

12/07/2006

Court Reporter:

Jackie Parham

Page #:

Line #:

Correction/Reason for change:

78-17 →

Additional research information
on Reservation of Rights involved
in Life Claims.

79-8 ↑114 17115 5

Examples of other life insurance
companies using Reservation of
Rights letters in life insurance claims
I personally worked on each of these
cases.

Exhibit "A": Letter of May 12, 2000 Page:
Reserving of rights by Monumental in
case of Allegro v Monumental Life
Ins. Co.

Exhibit "B": Letter of January 12, 2004
Page 1, Great-West Life Ins company
Reserves rights to obtain additional
medical information.

② Letter of December 12, 2003, Page 1
reserves rights on ① conducting additional
inquiries ② contract ③ applicable law.
Case of Puk v Great-West Life &
Annuitudin Ins Co.